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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

HIGHLAND PARK MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 1, 1950.
CERTIORARI GRANTED FEBRUARY 26, 1951.

SUPREME COURT OF THE UNITED STATES

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1 In the United States Court of Appeals for the Fourth Circuit

No. 6082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY, RESPONDENT

Appendix to Petitioner's Brief—Filed April 27, 1950

Before the National Labor Relations Board

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

Case No. 10-C-2066

DECISION AND ORDER

On March 31, 1949, Trial Examiner Herman Marx issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report. The Respondent also requested oral argument. This request is hereby denied because the record and exceptions, in our opinion, adequately present the issues and the positions of the parties.

The Board [1] has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed.[2]

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[1] Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board members.

[2] At the hearing, the General Counsel presented testimony through employees Hope, Robinson, Pruitt, Dawkins, and Burris to the effect that certain supervisors remarked that the Respondent would not sign a union contract or that it would take a long time doing so. These remarks were alleged to have been made to the employees while the supervisors were attempting to persuade them to return to work in the course of a strike at the Respondent's plant. The supervisors denied that they had made any statements relative to the Respondent's position on union contract matters. The Trial Ex-

The rulings are hereby affirmed.[3] The Board has considered the Intermediate Report, the exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except as they are inconsistent herewith.

1. The Trial Examiner found, and we agree, that the Respondent violated Section 8 (a) (5) and (1) of the Act by refusing on June 28, 1946, and on various occasions thereafter, to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit.[4] The Respondent excepts to this finding on the ground that the Regional Director's determination, under the consent election agreement, that the Union is the exclusive representative of the Respondent's employees in the appropriate unit "was a purely arbitrary declaration." Specifically, the

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aminer did not resolve the conflicting testimony but, in his Intermediate Report, struck the testimony of the General Counsel's witnesses relating to the remarks of the supervisors as to the Respondent's contract policy, on the ground that the statements "appear to be no more than opinions by the respective supervisors." In view of our finding herein, without reference to the alleged statements of the supervisors, that the Respondent violated Section 8 (a) (5) of the Act, we find it unnecessary to pass upon the question presented by the Trial Examiner's ruling, i.e., whether the supervisor's statements, if made, were, in their context, attributable to the Respondent.

[3] On motion of the Respondent, the Trial Examiner dismissed paragraph IX of the complaint, alleging independent violations of Section 8 (a) (1) of the Act on the ground that no charge with respect to the aforesaid allegations of the complaint had been filed and served upon the Respondent in accordance with Section 10 (b) of the amended Act. No exceptions having been filed thereto, we hereby affirm the Trial Examiner's ruling.

We reject the Respondent's exception to the Trial Examiner's ruling denying its motion to dismiss the complaint made on the ground that the Congress of Industrial Organizations, with which the Union is affiliated, has not complied with the filing requirements of Section 9 (f), (g), and (h) of the amended Act. See *Matter of Northern Virginia Broadcasters, Inc.*, 75 N. L. R. B. 11.

[4] In substantial agreement with the Trial Examiner, we find that all production and maintenance employees at the Rock Hill, South Carolina, plant of the Respondent, excluding clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, as amended.

Respondent contends that the Board's field examiner, in the course of conducting an investigation of the challenged ballots, misled the Respondent into believing that it would later be given an opportunity to present evidence to the Board or to a Trial Examiner
3 of the Board as to the employment status of the seven employees whose voting eligibility was challenged by the Union. Contrary to the contention of the Respondent, we find, for the reasons stated in the Intermediate Report, that the Respondent was actually afforded an adequate opportunity to present its position and evidence as to the employment status of the seven employees involved herein, that it did, in fact, avail itself of this opportunity with full knowledge of the purpose of the investigation, and that it was not misled as to its rights in a consent election proceeding of this character.

As we recently had occasion to note in connection with post-election proceedings under the terms of an identical consent election agreement:

> the objective of providing for the procedure of a consent election of the type which does not require a Board certification is to enable the parties, if they so choose, with the approval of the Regional Director, to ascertain the uninhibited desires for representation of the employees in an appropriate unit without recourse to the *Board* at any stage of the proceeding. . . . In keeping with this view, we have held that we will disturb the Regional Directors determination only when pertinent to the issues presented in an unfair labor practice proceeding, and then on the sole ground that the Regional Director's rulings were arbitrary or capricious.[5]

Upon consideration of the entire record, we find, therefore, like the Trial Examiner, that the Regional Director, in upholding the Union's challenges to the voting eligibility of the seven employees in question on the basis of the evidence produced in the course of the field examiner's investigation, and in determining that the Union is the exclusive representative of the Respondent's employees in the appropriate unit, was not acting in an arbitrary or capricious manner.

2. The Respondent further excepts to the Trial Examiner's finding that it unlawfully refused to bargain with the Union on the grounds that (a) the Board is chargeable with *laches* in that, although the charge in the instant proceeding was filed on September 13, 1946, the complaint was not issued by the General Counsel until January 10, 1949; and (b) even assuming that the Union was

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[5] *Matter of McMullen Leavens Company*, 83 N.L.R.B., No. 138, and cases cited therein.

at one time the majority representative, approximately 2 years have already elapsed since such showing of majority status. We do not agree. It is well established that the doctrine of
4 *laches* will not lie against the Board.[6] Moreover, as between an offending party and the victims of his unfair labor practices, the consequences of administrative delay should be borne by the former.[7] As to the Respondent's contention that it should not now be required to bargain with the Union, assuming, *arguendo*, that a loss of majority has occurred since the Regional Director's determination that the Union is the lawful bargaining agent, we attribute such loss to the Respondent's unlawful refusal to bargain with the Union. To refuse to require the Respondent to bargain collectively because the Union lost its majority, "would not only leave the Respondent's unlawful conduct unremedied, but would also obviously discourage collective bargaining . . . . in the hope and expectation that a union's majority will be dissipated by delay and litigation."[8] For the foregoing reasons, we find no merit in the Respondent's exemptions.

3. Like the Trial Examiner, we find that, apart from its designation in the consent election as bargaining representative, the Union demonstrated its majority position thereafter by cards and by a petition, but the Respondent still refused to bargain. We attach no significance on this score to the Respondent's contention that it had no means of knowing but had reason to doubt whether the signatures on the union cards and petition were authentic and representative of the uncoerced choice of a majority of its employees. Rather do we find, in the union cards[9] and petition, as did
5 the Trial Examiner, additional evidence of the Union's continued representative status as the bargaining agent of the Respondent's employees involved herein. Moreover it is clear, and we find, in agreement with the Trial Examiner, that the Respondent

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[6] *N. L. R. B.* v. *Wilson Line, Inc.*, 122 F. 2d 809 (C. A. 3); *Matter of Quarles Manufacturing Company*, 83 N. L. R. B., No. 109.

[7] *N. L. R. B.* v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685, 697-698; *Matter of Agar Packing & Provision Corporation*, 81 N. L. R. B., No. 199.

[8] *Matter of Lancaster Foundry Corporation*, 82 N. L. R. B., No. 145, and cases cited therein.

[9] The Respondent excepts to the failure of the Trial Examiner to find that James E. Kelly "did not sign a Union card in the presence of a witness in whose presence the card purports to show he did sign." While the record shows that Kelly denied having signed the card in the presence of the witness Morgan, Kelly testified further that he did in fact sign the Union card, although in the presence of another witness. In the absence of any evidence in the

was seeking to avoid bargaining by questioning the authenticity of the cards and petition.

Accordingly, because it is admitted that the Respondent refused to bargain with the Union and because the defenses and reasons offered by the Respondent for such refusal are, under all the circumstances and upon a consideration of the entire record lacking in merit, we find that the Respondent has violated the Act. More particularly, we find that on June 28, 1946, and at all times thereafter, the Respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the unit hereinabove found to be appropriate, and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (5) and (1) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Highland Park Manufacturing Company, Rock Hill, South Carolina, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all production and maintenance employees, at the Respondent's Rock Hill, South Carolina, plant, excluding clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the Amended Act;

(b) Interfering in any other manner with the efforts of Textile Workers Union of America, CIO, to bargain collectively on behalf of employees in the aforesaid bargaining unit.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers Union of America, CIO, as the exclusive bargaining representative of all production and maintenance employees at the Respondent's

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record that Kelly's signature was obtained through fraud or coercion, we believe the mistake in the identity of the witness to Kelly's signature, if made, to have no effect on the validity of Kelly's union card. In any event, the authorization of the Union as the bargaining agent herein was amply demonstrated without the inclusion of Kelly's card.

Rock Hill, South Carolina, plant, excluding clerical em-
6 ployees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act, with respect to rates of pay, wages, hours of employment, or other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Rock Hill, South Carolina, copies of the notice attached hereto, marked Appendix A.[10] Copies of such notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent or its representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Signed at Washington, D. C., this 29th day of June, 1949.

PAUL M. HERZOG,
Chairman;
JOHN M. HOUSTON,
Member;
ABE MURDOCK,
Member,
[SEAL] *National Labor Relations Board.*

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL BARGAIN collectively upon request with TEXTILE WORKERS UNION OF AMERICA, CIO, as the exclusive repre-
7 sentative of all employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment, or other terms or conditions of emply-

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[10] In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A DECISION AND ORDER," the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

ment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at the Rock Hill, South Carolina, plant, exclusive of clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act.

WE WILL NOT in any manner interfere with the efforts of TEXTILE WORKERS UNION OF AMERICA, CIO, to bargain collectively with us as the exclusive representative of the employees in the appropriate unit described above.

HIGHLAND PARK MANUFACTURING COMPANY,
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America

Before the National Labor Relations Board, Division of Trial Examiners, Washington, D. C.

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

Case No. 10-C-2066

Messrs. William J. Raines and *James W. Mackle*, for the General Counsel.

Mr. Whiteford S. Blakeney, of Charlotte, N. C., for the Respondent.

8 Before National Labor Relations Board

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

On September 13, 1946, Textile Workers Union of America, CIO,[1] filed a charge with the Regional Director for the Tenth Region of the National Labor Relations Board.[2] On January 10, 1949, the

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[1] Textile Workers Union of America, CIO, will be referred to herein as the Union.

[2] The National Labor Relations Board will be referred to herein as the Board.

General Counsel[3] of the Board issued a complaint alleging, in substance, that the Respondent, Highland Park Manufacturing Company, had engaged, and was engaging, in unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1), 8 (a) (5), 2 (6) and 2 (7) of the National Labor Relations Act (49 Stat. 449-457, as amended by 61 Stat. 136-163), herein referred to as the Act.

In its significant aspects, the complaint[4] alleges that, in accordance with the results of a consent election held on May 1, 1946, the Regional Director certified the Union on May 29, 1946, as the representative of the employees in an appropriate unit at the Respondent's plant in Rock Hill, South Carolina; that on June 25, 1946, "and at all times thereafter," the Union requested the Respondent to bargain collectively with it concerning the wages and other conditions of employment of the said employees; that on June 28, 1946, "and at all times thereafter," the Respondent refused to bargain collectively with the Union in violation of Sections 8 (a) (1) and (5) of the Act; and that "from on or about March 13, 1946, and continuously thereafter," the Respondent committed certain specified acts of interference with, and restraint and coercion of, the rights guaranteed to its said employees by Section 7 of the Act, thus violating Section 8 (a) (1). Copies of the charge and complaint were duly served upon the Respondent.

The Respondent filed an answer on February 1, 1949, in which it admits the jurisdictional averments of the complaint, the holding of the election, the certification of the Union, and the request by it on June 25, 1946, for collective bargaining, but denies the other allegations bearing on the alleged unfair labor practices, and that it has committed such practices.

Pursuant to notice duly served upon the Respondent and the Union, a hearing was held at Rock Hill, South Carolina, on February 15, 16, and 17, 1949, before the undersigned, Herman Marx, duly designated as Trial Examiner by the Chief Trial Examiner.

At the hearing, the Respondent moved to dismiss Paragraph IX of the complaint on the ground that it is not supported by the charge and that the unlawful conduct alleged in the paragraph occurred more than six months prior to the filing and service of any charge with respect thereto, as required by Section 10 (b) of the Act.

Paragraph IX alleges certain specified acts of the Respondent

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[3] References to the General Counsel herein include the attorneys who appeared for him at the hearing.

[4] The complaint also contains the customary allegations of jurisdiction, which is not in issue here.

constituting interference with, and restraint and coercion of, the employees in the exercise of their statutory guarantees, in violation of Section 8(a) (1). The charge, in essence, alleges that the Respondent engaged in unfair labor practices "within the meaning of Section 8, subsections (1) and (5) of said Act, *in that*" the Respondent refused to bargain after the election and certification (emphasis supplied). It will be observed that the violation of Section 8(a) (1) alleged derives solely from a refusal to bargain and contains no reference to any other conduct as a violation of Section 8(a) (1). In response to an inquiry from the Examiner, the General Counsel agreed that Paragraph IX was designed to allege "independent violations of Section 8(a) (1)"[5] and that such violations "are not intended to support the allegation charging the Respondent with refusal to bargain," except that they might be relevant to a consideration of "the color[6] of the alleged violation" of Section 8(a) (5). The Examiner granted the motion[7] to dismiss Paragraph IX upon the

[5] Although Paragraph IX avers that the Respondent committed the acts therein specified "from on or about March 13, 1946, and continuously thereafter," it was assumed *sub silentio* from the context of the argument that the alleged conduct occurred in 1946 or, in any event, that if the charge filed was insufficient to sustain Paragraph IX any new or amended charge covering the acts set forth in the paragraph could not be filed and served within six months after the commission of the specific acts. For that reason, the Trial Examiner for the purposes of the motion, attaches no significance to the phrase "and continuously thereafter."

[6] The Respondent does not deny its refusal to bargain, basing its defense upon the impropriety of the certification and the absence of proof of representation. If the contention is incorrect and the refusal to bargain, therefore, offends Section 8 (a) (5), the background and "color" of the refusal are not particularly germane.

[7] Prior to the hearing the Respondent filed a motion to dismiss the entire complaint upon several grounds, including the one directed to Paragraph IX at the hearing. The motion was duly referred to the undersigned, who entered an order dated February 8, 1949, denying the motion. The Examiner could not tell at that time whether Paragraph IX was designed to allege conduct which might "be relevant to the charge" of refusal to bargain. Moreover, as the motion was directed to the complaint as a whole, the Examiner concluded that the motion should be denied because the complaint contained other allegations such as the refusal to bargain, which stated a cause of action and therefore required a denial of the motion.

theory that no charge, with respect to the allegations of Paragraph IX, had been filed and that it had not been filed and served in conformity with Section 10(b) of the Act.[8] The Respondent also moved to dismiss the complaint upon the ground that the Congress of Industrial Organizations (not the Union), of which the Union is an affiliate, had not complied with the filing requirements of Section 9(f), (g), and (h) of the Act. That motion was denied.

The General Counsel, relying upon Section 203.20 of the Board's Rules and Regulations, moved that the Respondent be required to set forth in its answer, in addition to the several denials, "a short and simple statement of the facts which constitute its defense." The motion was denied. A motion by the General Counsel to conform the pleadings to the proof with respect to such minor matter as names, spelling and dates was granted.

The General Counsel and the Respondent were represented by counsel[9] at the hearing, participated therein, and were afforded a full opportunity to be heard, examine and cross-examine witnesses, adduce evidence bearing on the issues, submit oral argument and file briefs. The General Counsel and Respondent waived oral argument. Neither party has filed a brief.

Upon the entire record and from his observation of the witnesses, the Trial Examiner makes the following:

Findings of Fact

I. The business of the Respondent

Highland Park Manufacturing Company is a North Carolina corporation, with its principal office at Charlotte, North Carolina.

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[8] The phrasing of the charge is somewhat unusual because of its peculiarly restricted nature. The Examiner regards such cases as *Consumers Power Co.* v. *N. L. R. B.*, 113 F. 2d 38 (C.A. 6) and *Matter of Vanette Hosiery Mills*, 23 L.R.R.M. 1198 as inapplicable. The *Consumers Power* case charged the claimed unlawful conduct in "the general language of the statute," and in *Vanette*, the allegation was that the interference, restraint and coercion consisted of a refusal to bargain and "*other acts and conduct*" (emphasis supplied). Cf. *Matter of Electric Auto Lite Co.*, 80 N.L.R.B., No. 243, 23 L.L.R.M. 1268, where the Trial Examiner who heard that case reached a conclusion similar to that of the undersigned, but the Board found it unnecessary to pass on the question.

[9] Counsel for the Union also appeared during a portion of the hearing, but he was excused, at his request, because he had another engagement.

It operates a plant at Rock Hill, South Carolina, where it is engaged in the manufacture and sale of broadcloth, shirtings and knitted yarn. During the year 1946 [10] the Respondent purchased raw materials valued in excess of $100,000, approximately 90 percent of which was purchased outside the State of South Carolina and shipped in interstate commerce to the said plant at Rock Hill. During the same period, the Respondent manufactured and sold textile products at a valuation in excess of $100,000, approximately 90 percent of which was shipped in interstate commerce from the Respondent's Rock Hill plant to points in other States.

II. The Labor Organization Involved

Textile Workers Union of America, CIO, is a labor organization which admits to its membership employees of the Respondent.

III. The Alleged Unfair Labor Practices

A. *Background of undisputed facts*

On April 10, 1946, the Respondent and the Union signed an agreement for an election by the Respondent's employees at the Rock Hill plant in order to determine whether the employees wished to designate the Union as their exclusive bargaining representative. The agreed unit consisted of all production and maintenance employees; but excluded clerical and supervisory personnel. The agreement, among other things, provides: "Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary
12 procedures and policies of the Board; provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election." The agreement also provides that "the eligible voters shall be those employees included within the unit who appear on the payroll" on April 12, 1946. Among other things, Article 7 of the instrument states that "if challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon."

The election was held on May 1, 1946. A total of 402 ballots were cast. Of these, 197 voted in favor of the Union, and 194 against its designation. Eleven ballots were challenged. Among these were seven female employees who had previously been em-

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[10] The Respondent's answer, which admits the jurisdictional averments of the complaint, also admits that, with respect to such allegations, the year 1946 is "representative of all times material herein."

ployed as "draw-in" hands at the Respondent's Charlotte plant. They were challenged by the Union on the asserted ground that they were "on loan" from the Charlotte plant and were, therefore, "not regular employees of" the Rock Hill mill.

On or about May 2, 1946, the Regional Director, through Arthur Joy, a Field Examiner on his staff, commenced an investigation of the question of the eligibility of the challenged ballots.

On May 8, 1946, the Respondent's attorney wrote, on its behalf, to the Regional Director, requesting "that a formal hearing be held before a Trial Examiner" for the submission of evidence with respect to the seven "draw-in" hands, in the event that the Regional Director should reach the conclusion that the challenge to their eligibility should be sustained.

On May 29, 1946, the Regional Director issued his "Consolidated Report On Challenged Ballots and Objections and Consent Determination of Representatives." The Report reviews the determinations made by the Field Examiner who conducted the election, analyzes factual data revealed by the investigation, and considers contentions advanced both by the Respondent and the Union. It concludes that one challenged voter was eligible (contrary to the Field Examiner's determination); that two ballots were void; and that eight other voters, including the "draw-in" hands, were ineligible. With respect to the "draw-in" employees, after reviewing evidence pertaining to their employment status at the Rock Hill plant, the Report states that "although the length of the present period of employment (at Rock Hill) is problematical, all factors indicate that it is of temporary nature only" and that
13 "because of this and other factors" discussed in the Report, the seven hands were not eligible to vote. The Report also points out that the mere fact that the seven employees were on the April 12 payroll was not decisive, since the agreement also provides for an election "in accordance with the Board's customary practices and procedures," and it has "frequently held" that temporary employees are not eligible to vote (citing *Matter of Sierra-Pacific Power Co.*, 56 N. L. R. B. 458 and *Matter of Rock Island Produce Co.*, 48 N. L. R. B. 930).

As the one ballot found to be eligible for the tally would be insufficient to affect the results of the election, the Regional Director held that he would not direct that the ballot be opened. Similarly, the other challenged ballots have not been opened, in view of the Regional Director's determination that two of them were void and the rest ineligible for the tally.

In the Report, the Regional Director refers to the Respondent's request "that a hearing be held before a Trial Examiner" in the event of a conclusion the employees involved were not eligible. The Report construes the request as one, "in effect," to "set aside"

the provision in the agreement that the determination of the Regional Director "be final and binding." The Report denies the request, asserting that "no valid reason appears to have been presented" to warrant concurrence in it.

The Report concludes that a majority of the valid votes were cast for the Union, and certifies the Union as the exclusive bargaining representative of the employees in the Union.

On or about June 5, 1946, the Respondent filed with the Board a document entitled "Exceptions to Consolidated Report of Regional Director." Among other things, the Exceptions challenge the findings in the Report as "ex parte" and "not a bona fide exercise of discretion." The Exceptions admit that the "Board's Field Examiner did ask certain questions of the Company which representatives of the Company answered," but assert that the Respondent "did not understand that it then had an opportunity . . . . to present the facts and circumstances . . ." and that it did not have such an "opportunity." The Exceptions request the Board to reverse the Regional Director's rulings with respect to the two void ballots and the eligibility of the seven "draw-in" employees, or, in the alternative, that an opportunity be given to the Respondent to present evidence "at a formal hearing" on the questions involved.

14 On June 28, 1946, the Board, through a member of its staff, wrote to the Respondent's counsel, acknowledging receipt of the Exceptions, pointing out the finality of the Regional Director's determination under the agreement and the Rules and Regulations, and denying the request for a reversal of the Regional Director's rulings and "for an opportunity to present your argument at a formal hearing."

On June 25, 1946, the Union mailed to the Respondent a proposed "collective bargaining contract to cover the rates of pay, wages, hours of employment, and working conditions of the employees," and, in the accompanying letter, requested that a date for a bargaining meeting be set. The Respondent answered in a letter dated June 28, 1946, that "in view of the Exceptions" it was the concern's "understanding that the matter is not now at a point where it is necessary for us either to accede or refuse to accede" to the request for collective bargaining.

On July 3, 1946, the Union wrote to the Respondent again, pointing to the Board's action on the Exceptions, and requesting a bargaining conference. The Company responded by letter on July 5, stating that its counsel had written to the Board and that what it was "trying to do" was to secure "a hearing" and an "opportunity to present evidence and facts" bearing upon the matters "ruled on" by the Regional Director.

Thereafter, on various occasions, both orally [11] and by correspondence,[12] the Union requested the Company to bargain, but the Respondent, in effect, refused to do so, assigning as its reason, in substance, the contention that it was "entitled to a hearing."

It is undisputed, and the Examiner so finds, that the Respondent has refused to bargain with the Union.[13] The issue is whether it was legally justified in its refusal.

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[11] See testimony of J. H. Fullerton, a representative of the Union.

[12] Additional letters requesting bargaining negotiations were sent to the Respondent on July 16, August 28 and September 23, 1946. The Company responded to the letters of July 16 and August 28, respectively, with its letters of July 22 and September 3, 1946. There was no response to the letter of September 23.

[13] Testimony was presented by the General Counsel through Witnesses Hope, Robinson, Pruitt, Dawkins and Burris that during the course of a strike at the plant (commencing on September 16, 1946) certain supervisory employees variously made remarks to the general effect that the Company would not sign a union contract or that it would take a long time doing so. The statements made to Hope, Robinson and Pruitt were asserted to have been made while the respective supervisors were attempting to persuade them to return to work. The remark to Burris was allegedly made while a supervisor was seeking to induce Burris' children to return and consisted of a statement that the Company's president had told the supervisor that "he would never sign a contract." The Examiner entertained considerable reservation about the competency of the testimony, but admitted it provisionally until he could determine whether the General Counsel would, before the close of the hearing, lay a sufficient foundation for its admission by proof of the functions and authority of the supervisors. Evidence to that end was presented, but in the judgment of the undersigned was insufficient. The Examiner intimated that he would probably strike the testimony in his Intermediate Report. The supervisors' alleged statements, with respect to the Company's contract policy, as quoted by Hope, Robinson, Pruitt and Dawkins, appear to be no more than opinions by the respective supervisors. Burris' testimony is inadmissible hearsay. Accordingly, the Trial Examiner strikes that portion of the testimony of the named witnesses relating to statements made by supervisors concerning the Respondent's contract policy. The rest of the witnesses' testimony may stand.

15 B. *The conclusive effect to be given to the Regional Director's determination*

At the hearing, the Examiner sustained an objection to proof offered by the Respondent with respect to the voting eligibility of the seven "draw-in" employees. The Respondent was permitted to make a detailed offer of what it proposed to prove.[14] The basis for the exclusion of the offered testimony was that, by the terms of the agreement and the Board's Rules and Regulations,[15]
16 the Regional Director's determination was "final and binding upon any question, *including questions as to the eligibility of any voters*" (emphasis supplied). It was the Trial Examiner's conclusion that the proffered evidence was simply an effort to go behind the finality of the Regional Director's ruling and to litigate a question which both the Union and the Respondent had expressly committed to the Regional Director's determination.

It is well settled that, in the absence of proof that a Regional Director's determination of voting eligibility in a consent election is arbitrary or capricious, his decision on the matter is conclusive and may not be collaterally attacked.[16] The rule and its under-

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[14] In view of the Trial Examiner's ruling that the proffered testimony was an inadmissible effort to go behind the finality of the Regional Director's determination, it was agreed at the hearing that the Respondent would not call each of the witnesses it had available with respect to the eligibility of the seven employees, but that, to conserve time, an objection would be made by the General Counsel to the proffered line of testimony, and a ruling made thereon by the Trial Examiner, and that the Respondent would be permitted to make an offer of proof of what such witnesses would have testified to if permitted to do so. The sole purpose of the offer was to frame the issue for the applicable ruling of the Trial Examiner. As it was unnecessary to the statement of the issue and the ruling involved, the Trial Examiner's exclusion of the evidence does not take into account other possible objections to portions of the offer of proof.

[15] See Article III, Section 12, Rules and Regulations, Series 3, in effect at the time of the election.

[16] *N.L.R.B.* v. *Capitol Greyhound Lines*, 140 F. 2d 754 (C.A. 6), certiorari denied, 322 U. S. 763; *Semi-Steel Casting Co.* v. *N.L.R.B.* 160 F. 2d 388 (C.A. 8); *Matter of Postex Cotton Mills, Inc.*, 80 N.L.R.B., No. 178, 23 L.L.R.M. 1197; *Matter of Miehle Printing Press and Manufacturing Co.*, 58 N.L.R.B. 1134.

lying reason were summarized in *N.L.R.B.* v. *Capitol Greyhound Lines*, 140 F. 2d 754 (C. A. 6) as follows:

> . . . we find that the Regional Director's ruling was neither arbitrary nor capricious. In the absence of such conduct, we feel ourselves bound by the terms of the agreement providing for the finality and binding effect of the Regional Director's determination to the same extent as a court is bound by an agreement to abide by an arbitrator's award. To hold otherwise would permit an employer deliberately to ignore binding commitments embodied in a consent agreement; would open the door to subterfuges for hampering and delaying a final determination of a bargaining representative; and would tend to defeat, rather than effectuate, the policies of the Act.

As in a challenge to an arbitrator's award [17] (or, for that matter, as in any case where a party has the affirmative of an issue), the burden of showing that the Regional Director acted arbitrarily or capriciously is upon the Respondent. Proof of erroneous judgment or misinterpretation of the facts is not enough.[18]

17 The foundation for an escape from the finality of the decision must, in fact, establish arbitrariness or caprice.

The Respondent failed to establish that the Regional Director acted arbitrarily or capriciously. The record shows that he caused an investigation to be made of the facts relating to the challenged ballots and issued a report thereon. This was done in conformity with Article 7 of the agreement. In the course of the investigation, Arthur Joy, the Field Examiner who made it, met at the plant with representatives of the Respondent and the Union on the day following the election. The meeting was arranged by the Field Examiner. The Respondent was represented by the concern's general superintendent (from its Charlotte office), the general manager of the Rock Hill plant, T. W. Church, and its attorney. The Respondent understood that "the purpose of the meeting was for him (Joy) to get some information in regard to (the) challenged ballots" (Church's testimony). Church affirmed under cross-examination that the Field Examiner "asked a great many questions." He also testified that Joy "asked to see the pay rolls, and where (the) girls lived, and questions of a similar nature." Under cross-examination,

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[17] 3 Amer. Juris. 991 (Arbitration and Award).

[18] An arbitration award (cf. the *Capitol Greyhound* case) will not be set aside unless it is clearly made to appear that the arbitrators "misconceived their duties, acted upon some fundamental or apparent mistake, or have been moved by fraud or bias." 3 Amer. Juris. 961 (Arbitration and Award)

Church manifested considerable vagueness as to the information he gave Joy, stating in several instances that he "probably" furnished certain data or that there was a "possibility" that he did, and in others claiming a faulty recollection. From his demeanor and answers, the Trial Examiner has concluded that Church manifested an absence of frankness with respect to his account of the information furnished to Joy. However, it is plain that even on the basis of Church's testimony, the Respondent made a statement of its position on the question involved; that Joy examined the relevant pay-roll records; that he inquired into the history of the employment of the seven girls in both the Charlotte and Rock Hill plants and of their record of transfers between the two mills; and that he secured other relevant information from the Company. Church also agreed that there was a "possibility" that he discussed with Joy the "applicability of group insurance" prevailing at the Rock Hill plant to the girls on the occasion of previous transfers and that he "probably" displayed the Social Security records to Joy and discussed with him the difference in wage rates between both plants and how they were applied to the seven hands. Church asserted that he "think(s)" he discussed with Joy differences, with respect to the manner and time of payment and pay-roll periods, between the seven girls and other employees at the Rock Hill plant.
18 Significantly, leaving aside the inferences drawn from it, much of the information secured by Joy from the Respondent is reflected in the Regional Director's Report and in the offer of proof made by the Respondent's counsel.[19]

Church gave some testimony on direct examination that the firm's representatives "left (the meeting) with the understanding that we would be allowed to present evidence and facts to the Labor Board in regard to (the seven "draw-in" girls) and that when it was decided that the votes would be opened, that they would be opened in Atlanta in front of a representative of the CIO and a representative of the Company." He also affirmed that he requested of Joy "an opportunity to present the facts and evidence." However, it does not clearly appear from his testimony at this point what "opportunity" the witness had in mind, whether on that occasion or some other. The next question put to him by counsel whether he understood he "was then and there being given such opportunity" brought the vague response, "Well, I understood we would be given opportunity."

[19] The Regional Director in his Report discusses in some detail the employment records of the employees involved, the employment practices of the Respondent, and its contentions, and it is a reasonable inference that his discussion and findings are based, at least in part, on the information secured by Joy from the Respondent.

At that point, the undersigned indicated to counsel that Church's "understanding" might "very well be a conclusion." Thereupon, Church was asked to state "what was said in regard to your request to have opportunity to present the facts and evidence in regard to the eligibility of the seven people," and the witness gave the following testimony:

> A. Well, I can't remember the exact words, but I asked that we be given the opportunity to present the complete facts and the complete picture to either the Board or whoever was necessary. I can't remember Mr. Joy's words, but I think he said that we would be given that opportunity.
>
> Q. (By Mr. Blakeney) Now, irrespective of what you think, will you state what was the substance of what he communicated to you, you would or wouldn't have an opportunity.
>
> A. Well, he said we would have, or words to that effect.

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Church then denied that the "Company ever has been given an opportunity to give facts and evidence" with respect to the employment status of the seven girls.

The implication of the denial and the quoted testimony is that the Respondent was misled into not giving the facts in "detail." However, the testimony is manifestly vague and conclusionary. The Trial Examiner observed from both the witness' demeanor and the context of his evidence that he was hesitant and uncertain, even in response to repeated questions of a leading nature. The best construction which can be placed upon Church's testimony is that he "think(s)" Joy said a future opportunity would be furnished to the Respondent to submit "facts and evidence." His denial that "the Company ever has been given (such) an opportunity" is manifestly contrary to the facts, for he admitted that Joy "asked a great many questions"; that "we gave him everything he asked for"; that he understood that "the purpose of the meeting was for (Joy) to get some information in regard to these challenged ballots"; and that the Respondent made a statement of its claim with respect to the eligibility of the seven hands. It is also evident that Company furnished considerable pertinent data to Joy.

Between the meeting on May 2 and the certification on May 29, the Respondent failed to send or submit any facts to the Regional Director (see Church's testimony), and there is no evidence that it has ever taken the initiative to submit any facts bearing on the eligibility of the challenged employees, except to insist on "a formal hearing" before a Trial Examiner which would, in effect, be a review of the Regional Director's determination. Significantly, its attorney attended the meeting with Joy, and the Respondent was armed with whatever implementation it needed (including its books) to make whatever disclosure of information it desired.

On the basis of the evidence, the Trial Examiner finds that the Respondent knew the purpose of the investigation, had an opportunity to explain its position and place any facts in its possession at the disposal of the Regional Director, and did, in fact, in response to Joy's "many questions" give him considerable information bearing on the eligibility of the challenged voters, although Church manifested a faulty recollection and was somewhat vague concerning the data Joy secured. There is no credible evidence that the Respondent was in any way misled and the Trial Examiner finds that it was not misled.

The Respondent's conclusionary implication that it was "misled" also overlooks an important feature of its agreement. Article 7 of the instrument requires the Regional Director to make an investigation of challenged ballots. There is nothing in the agreement which requires him to interview one person rather than another or to secure his information from any specified source. The scope and conduct of the investigation are committed to the discretion of the Regional Director by the plain terms of the Respondent's own agreement.[20] Quite aside from the fact that Joy did interview officials of both the Respondent and the Union and received information from the Company in response to "a great many questions," the Respondent's emphasis on its claim to "present facts and evidence" contains the fallacy that its agreement gives it any right to do so or to place any measure on the nature and scope of the Regional Director's investigation. The agreement and the Board's Rules and Regulations vest in the Regional Director a broad discretion over the scope and conduct of his investigation. An intelligent exercise of such discretion must leave it free to adjust itself to the varying needs of diverse situations. To read into agreements for consent elections any pre-conditions for the scope and conduct of the Regional Director's inquiry would have a debilitating effect on the force of commitments voluntarily made and would hamper the speedy solution of representation questions which such agreements are designed to achieve (cf. *N.L.R.B.* v. *A. J. Tower Co.*, 329 U. S. 324). Certainly, in the absence of a plain showing of administrative abuse, neither party to such an agreement should be permitted to attach *a posteriori* conditions either to its obligation or to the inquiry it has freely placed in the hands of another.

The record is barren of such a showing. Measured against the

[20] Conceivably, there may be many situations where a proper and objective investigation would require that a Regional Director give primary emphasis to information secured from sources other than that of a union or an employer, for the plain reason that they are interested parties.

conclusionary "impression" to which Church testified, is the undisputed evidence of an investigation which included the receipt of factual data from the Respondent's top management personnel, given in the presence of its attorney, as well as a statement of its position with respect to the challenged ballots. Moreover, the Regional Director's Report shows on its face that his investigation covered, and that he gave consideration to, many, if not all,
21 of the purported facts the Respondent contends that it could establish through its proffered evidence. There is no proof that the investigation did not include all the basic and relevant facts (no obligation is imposed upon the Regional Director to spell out all the evidence, minute or otherwise, in his Report) or that other persons, including the seven "draw-in" girls, were not interviewed. At most, the Respondent's offer of proof raises a conjecture that the investigation did not reach some of the purported facts (consisting, in part, of evidentiary minutiae) included in the offer or that the Regional Director erred in his construction of such alleged facts. All this falls far short of the burden which the law places upon the Respondent of establishing that the Regional Director arbitrarily or capriciously refused to give effect to any knowledge he had of the controlling facts in the case [21] or that he otherwise acted arbitrarily or with caprice.

In the light of the foregoing, as well as upon the authority of well settled principle,[22] the Respondent's request for a "formal hearing," whether before a Trial Examiner or any one else, with respect to the eligibility of the challenged ballots, amounts to no more than a requirement that an appellate review be made of the Regional Director's findings. The Respondent's agreement and the Board's Rules and Regulations, to which the undertaking was expressly made subject, preclude such a procedure.

C. *Evidence, in addition to the election, that the Union represented the unit.*

The General Counsel produced evidence that the right of the Union to represent the unit does not rest alone on the certification.

James Fullerton, a representative of the Union, spoke to Church

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[21] *N.L.R.B.* v. *A. J. Tower Co.*, 329 U. S. 324.

[22] *Matter of Aetna Fire Brick Company*, 56 N.L.R.B. 849, 14 L.R.R.M. 159; *Matter of Sidran Sportswear*, 23 L.L.R.M. 1324; *Matter of Ferriss-Lee Lumber and Mfg. Co.*, 71 N.L.R.B. 989, 19 L.L.R.M.1078; cf. *Matter of A. J. Tower Co.*, 60 N.L.R.B. 1410, 16 L.L.R.M. 67 (see, also, *N.L.R.B.* v. *A. J. Tower Co.*, 329 U. S. 324, reversing 152 F. 2d 275 (C.A. 1) in which the Court of Appeals had denied enforcement of the Board's order).

in the summer of 1946, after the Respondent had advised the Union of its position on the certification, "again requesting recognition" and offering "to submit to a card check on our applications—
22 cross-check with the payroll." According to Fullerton, Church refused the offer,[23] and the Union thereupon undertook to "get the workers to sign up again" in order "to convince the Company that "the workers . . . wanted a union." The signatures were secured, principally in the months of July and August. The employees signed a card[24] bearing a different color from the ones previously used, "so there couldn't be any confusion" (Fullerton's testimony). The cards purport to state the membership of the signatory in the Union, the date upon which he signed, and that he designates the Union as his bargaining agent.

The record contains a list of 256[25] employees who signed the cards and the respective dates on which they signed. The bargaining unit during the period covered by the dates appearing in the list consisted of 430 persons, and there is no dispute that the 256 employees were members of the unit.

On or about September 10, 1946, according to Fullerton, he spoke to Church, again suggesting a cross-check and offering to have it made "by an impartial person," such as "some Conciliation person or an arbitrator" or a certified public accountant, but Church declined, stating that the Respondent had "a continuous appeal." Fullerton testified that he asked Church what that meant, but that the latter stated he did not know and that it was the advice of the Company's attorney. Then, according to Fullerton, he spoke to the Respondent's counsel "and made the same proposition" to him and received the same response about "a continuous appeal," and that "no matter what happened, it was in a continued appeal; anything that came up in regard to this case." Fullerton testified that,

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[23] Fullerton's testimony does not specify the date of the conversation, but from the context of the testimony it appears to have occurred in June. There is no evidence to controvert Fullerton's version of the conversation. The Examiner finds that it occurred as related by Fullerton.

[24] See G.C. 19 for a sample card.

[25] The list contains more than 256 names because some of them are duplicated.

[26] The evidence of the conversation with the attorney was not controverted. The Trial Examiner finds that the conversation, as related by Fullerton, occurred, not only because it was not disputed, but in the light of Church's version of his talk with Fullerton which will be adverted to below.

at the attorney's suggestion,[26] he spoke to Church again
23 about the cross-check, but that the plant manager declined to have it made, stating that he was following the attorney's advice. Fullerton asserted that he informed both the attorney and Church, in his conversations with them, that the Union was securing new authorization cards.

Church's testimony confirms that of Fullerton with respect to the offer to have the cards checked by "an impartial person" or, as the plant manager put it, "an arbitrator or auditor."[27] Although Church makes no specific reference to the phrase "a continuous appeal," he does not at any point deny making the statements with respect to the "appeal," but, in fact, lends corroboration to Fullerton's version. Church admits that he told Fullerton that the Respondent would refuse to recognize the Union and bargain with it, "on the basis" of a check of the new cards, because the Respondent "would rely on the election."[28] Church's version of the conversation differs from Fullerton's in only one material respect. Church testified that he also told Fullerton, in refusing to agree to the cross-check, that the Respondent "wouldn't know the authenticity of the cards."[29]

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[27] Church did not testify to any other conversation with Fullerton about the cross-check. Although Church could not fix the date of his talk with Fullerton, it is clear from the context of both versions that it was the one which Fullerton stated was held about September 10, 1946. The Examiner finds that the conversation was held on or about that date.

[28] In the light of the testimony given by both Fullerton and Church, the Examiner finds that the latter made the statements with respect to "a continuous appeal," as attributed to him by Fullerton.

[29] Respondent's counsel asked Church on direct examination what he stated to Fullerton as his "reason for not agreeing to the card check proposition." Church responded, "Well, we wouldn't know the authenticity of the cards. * * * They weren't going to bring the cards and show them to us. They proposed we have an arbitrator or auditor, I believe, to check the cards against the payroll." It is somewhat difficult to determine from his testimony whether Church was quoting Fullerton that "they weren't going to bring the cards and show them to us" or whether Church was only giving his interpretation of the situation. However, it makes no real difference in either event, in view of the findings made below.

The General Counsel presented evidence authenticating the signatures on the cards.[30] To counter this evidence and,
24 apparently as corroboration for Church's claim that the Respondent "wouldn't know the authenticity of the cards," the Respondent produced testimony from four of the signatories.

One employee, Nell McDonald, testified that she signed a card some time in August because a fellow-employee working near her post in the plant frequently called her "names" over a period of several months and said he was going to continue until she signed.[31] Another employee, Arthur Thomas, stated that he signed after the strike began, and not on August 3, 1946, the date of his card.[32] A third employee, Walter Sweatt, testified that the union representative who asked him to sign said that "he was going around getting everybody to sign that didn't want (a) strike"; that the witness responded that he was a watchman and understood that he was not supposed to belong to the Union; that the representative said that that circumstance made no difference; and that he (Sweatt) then signed "the book." Sweatt asserted that he signed because he thought it was "to keep from striking" and that he did not know that it was to join a union.[33]

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[30] It was stipulated that, if called to testify, 11 persons (named in the record) would have testified "that there is no one of 256 persons named on a list to be marked General Counsel's Exhibit No. 18 whose signature to a 'union card' (meaning G. C. 19) was not witnessed by at least one of the (11) individuals named above, the dates of such witnessing being the dates set opposite the names of the persons on General Counsel's Exhibit No. 18." The effect of the stipulation was to establish *prima facie* evidence of the authenticity of the cards.

[31] It is interesting to note that Mrs. McDonald's husband, J. R. McDonald, also signed a card, but there is no suggestion anywhere in the record that he did so for any reason other than of his own free will.

[32] Thomas stated that because he cannot read "enough to get by" he did not attempt to read the card. He testified, also, that he "can't write so well" and that therefore, the man who witnessed the card signed his name for him, but did so with his permission.

[33] The Examiner regards Sweatt's testimony that he did not know he was joining the Union as unreliable. His evidence on that point is inconsistent with his testimony that he told the union representative that he did not wish to sign because he was a watchman and understood that he was not "supposed to belong to (a) union." The witness did not impress the Examiner as reliable and he does not credit his claimed lack of understanding of the reason for his signature.

The fourth witness, John Shaver, asserted that he worked for seven weeks after the strike and that he then joined the Union.

According to Shaver, after the strike began he frequently
25 found his driveway filled with nails; that the road for a distance of a quarter of a mile in each direction from his house "was filled full of nails"; that he got many punctures in his tires; that he then went down to the Union's office, became a member, and said to Charles Morgan, a union representative, "Let's stop the nails," to which Morgan responded, "All right" and that "there wouldn't be any more"; and that after he joined the Union, "the nails quit coming." Under cross-examination, Shaver stated that he did not know who put "those nails out there," although he "always watched the driveway" and that when he was interviewed by a Field Examiner employed by the Board he did not tell him anything about the nails "because I thought he was on the opposite side."[34]

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[34] Shaver was interrogated about the "nails" at some length. Many apparently extravagant and colorful details emerged from his story, some of a manifestly improbable nature. He asserted that both the school bus and mail carrier stopped coming to his house; that on eight or ten different occasions he collected enough nails in his driveway to fill both hands, although he "always watched the driveway"; that the nails on the road were "big-headed roofing nails," some of them painted "the same color as the road" and "you couldn't see them"; and that "these roads was filled full of nails on both sides * * * they were scattered for about a quarter of a mile each way." At two points, Shaver was asked whether the school bus and mail truck "ever got a punctured tire." Both times, Shaver evaded the questions, stating they did not come into his driveway. When the matter was pressed, he said that the school bus "got several punctures" and that the mail truck "got punctured tires." Questioned further about the source of his information, he said that he knew about the bus because he was told about the punctures and "because he quit coming," and that the mailman told him twice about his truck's punctures. Shaver also said he told the "rural police" about the nails and it "got where they would travel through there maybe twice or three times a day. He volunteered that he had "heard they (the police) got nails out there twice." After he testified that he had picked up five punctures one morning on his way to work, he was asked whether he stopped to look for nails on his return, and he made the evasive statement that "they (unidentified) pretty well swept the country that day" and that "they didn't put them out in daylight * * *

It is unnecessary to evaluate the testimony of these wit-
26 nesses (although the Examiner regards Thomas as an honest witness and Sweatt and Shaver as unreliable).[35] The fact remains that there is unimpeached evidence that 252 other employees, a majority of the 430 in the bargaining unit, designated the Union as their bargaining agent. This conclusion is fortified by other evidence of the Union's representative status to be discussed below.

The testimony does suggest the possibility that Church had some warrant for his refusal to bargain on the basis of the cards because the Respondent "wouldn't know the authenticity of the cards." However, the evidence leads to the conclusion that the asserted doubt about the authenticity of the cards was not the reason for the refusal to bargain. First, there is the uncontradicted and credited testimony of Fullerton that Church stated before the new signatures were secured that the Company would refuse to have the Union's membership cross-checked and abide by the results because the Respondent had a "continuous appeal" from the Regional Director's findings. Second, Church admits that he told Fullerton in rejecting his proposal for a check of the new cards and for bargaining on that basis, that the Respondent "would rely on the election." Third, and perhaps most revealing, is Church's testimony that he "believe(s)" that "the Union proposed a new election" after a strike broke out at the plant in September 1946, but that he rejected the proposal, stating "we still

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they put them out at night (although he had never seen anybody "put out" any nails).

Upon obesrvation of Shaver's demeanor, it became apparent to the undersigned that Shaver fancied himself as a combatant on one of "opposite" sides and that in his fancied role he was making extravagant use of his imagination. None of his testimony was corroborated by the bus driver, mailman or police (they were not produced as witnesses). The witness' demeanor on the stand, his evasiveness at several points, and his eagerness to inject a description or an event at various places either to justify (unnecessarily) his conduct or place another's under a cloud, imparted the stamp of unreliability to his testimony.

[35] The Examiner credits the testimony of Mrs. McDonald concerning her reason for joining the Union, although in view of other testimony she gave (to which reference will be made below), he entertains some doubt about her reliability. The record shows that she voluntarily signed a petition in March 1947, as one of 304 employees. The petition was sent to the Respondent's president and recites the fact that the signers are members of the Union and designates it as their bargaining agent.

took our stand that we should get the final result of the old election by counting the votes and we agreed if they did count the votes, we would abide by that." Finally, all overtures for a
27 resolution of the controversy came from the Union, but the Respondent rejected all of them and offered none itself, advancing only its adamant insistence that it had a right to go behind its own agreement. It would seem that any real doubts that the Respondent entertained about the authenticity of the cards could readily have been resolved had it been willing to find a basis for removing them. Its failure to offer any proposals and its refusal to recede from its position on the election bespeak its real motive (to which further reference will be made below) for rejecting the Union's offer to bargain on the basis of a check of the cards.

On September 12, 1946, Fullerton called Church on the telephone and told him that the employees "were demanding action" and asked him "what he was going to do about it." Church said "he wasn't going to do anything."

Fullerton called a meeting of the Union's members on September 15 and reported to them the results of his efforts to open bargaining negotiations. The membership voted to go on strike on the following day "until the Company agreed to recognize the Union and bargain collectively" with it. The strike began on September 16, 1946, and ended on May 3 or 4, 1947.[36] The Examiner finds that the cause of the strike was the Respondent's refusal to bargain with the Union and was, therefore, caused by the Respondent's unfair labor practice. The undersigned also finds that upon the commencement of the strike, the bargaining unit at the plant was the one described in the agreement for the election and that it numbered 430 persons.

Between March 20 and March 24, 1947, the Union circulated a petition among its members and requested them to sign it. The document was addressed to R. H. Johnston, president of the Respondent. Among other things, it recited the membership of the signatories in the Union; that they wanted "the Union to represent us in collective bargaining about wages, hours of work and other conditions of employment"; and that they were urging "that the Company recognize its duty to bargain." The petition was signed by 304 persons who were in the Respondent's employ at the time of the strike.

The signatures were secured, at the instance of the Union, by a notary public, James H. Collins, who was employed in another plant in Rock Hill and was a member of the local of the Union

[36] A majority of the employees remained away from work during the strike.

there and of its auditing committee. Collins testified that
28 he knew most of the people who signed, that those he did now know were identified for him by others who did, that he gave the petition to all of the signatories to read or read it to them upon request (some could not read), and that they all signed in his presence. Collins stated that about half the employees signed at a commissary operated by the Union, and from which strikers secured their food during the strike, and that, except for two or three individuals whom he met on the street, he visited the homes of the other employees and secured their signatures there. The task consumed several days.

The only evidence produced by the Respondent to controvert any portion of Collins' testimony was given by Nell McDonald (who also testified that she signed a card because another employee called her names) and her husband, J. R. McDonald, who were both out on strike at the time they signed the petition. They did not dispute the fact that they signed (Mrs. McDonald signed for her husband at his request because he cannot read or write), but both testified that the document was not signed in Collins' presence. However, Mrs. McDonald stated that she could not remember any of the circumstances surrounding her signing of the petition. "I can't recall a thing about it," is the way she put it. Her husband testified that he was asked at the commissary to sign (he does not state by whom), that he took the petition home because he could neither read nor write, and that his wife signed for them both. According to McDonald, Collins did not go with him. There is no contention that both McDonalds did not sign freely and voluntarily (in fact, McDonald's testimony makes it appear as a cautious and deliberate act). The only matter placed in dispute is whether Collins was present at the time of signing. Significantly, Mrs. McDonald remembers nothing of the incident and her husband[37] does not explain how the petition got back to Collins.

However, in view of the voluntary nature of both signatures and the complete absence of any other evidence impugning either the authenticity of any of the 304 signatures or that they were voluntarily affixed to the petition, it is unnecessary to resolve the question of whether Collins saw the McDonalds sign. It may be assumed that if the Respondent were in possession of any
29 other evidence in derogation of that given by Collins, it would have produced it. Its failure to do so supports the

[37] McDonald suffers visibly from a nervous ailment, manifested by a trembling body, and from a marked speech impairment which rendered his testimony difficult to understand. He was examined only briefly.

conclusion that the signatures are authentic and that the petition is, in fact, what it purports to be.[38] On the basis of the evidence, coupled with the facts that Collins impressed the Examiner as a reliable witness, the undersigned finds that the persons who signed the petition were, on the respective dates on which they signed, members of the Union and that the effect of their signatures was to vest or reaffirm authority in the Union to represent them as their agent for collective bargaining with the Respondent.

The petition was mailed to Johnston on April 12, 1947. Church testified that he spoke to Fullerton about it and that he informed the latter that the Respondent "questioned the signatures and questioned whether they were signed with their own free will and accord." However, the only "inquiry or investigation" that Church testified the Respondent made about the matter was "about Mr. Collins." The Respondent "found out that he was a Union fellow" and that "put more doubt in our mind." For all that the record probatively shows, the sole ground for the refusal "to recognize" the petition was the fact that a "Union fellow" acted as a notary in witnessing the signatures.

The Respondent's approach to the petition fortifies the view that its real motive for refusing to bargain on the basis of a cross-check of the cards was not any doubt it entertained about the authenticity of the cards. In the case of the petition, as in that of the cards, all the Respondent did was to cloak itself with a conclusionary suspicion that it was not representative of the employees' will.

On the basis of the whole record, and particularly the Respondent's rejection of any suggestions made by the Union to reassure it, including even a proposal for a new election, and the Respondent's failure to advance any proposal of its own, except that which would derogate from its agreement, the Examiner finds that the Company did not reject the cards and the petition because of doubts concerning their authenticity, but that it did not wish to bargain with the Union in any event and used its insistence on the claimed invalidity of the Regional Director's determination and its questioning of the authenticity of the cards and the petition as a shield against its obligation to bargain.

D. *Concluding findings*

The Examiner makes the following concluding findings:

1. As a result of the election held on May 1, 1946, the Union became on that date, and was at all times thereafter, the exclusive

[38] The authenticity of the petition and its duplication of signatures on the new membership cards furnish corroborative evidence of the authenticity of the cards.

representative of the employees in the unit set forth in the election agreement for collective bargaining with the Respondent.

2. The employees who signed the cards in July, August and September 1946, and the petition in March 1947, constituted a majority of the unit described in the election agreement, and the signatories thereby designated the Union, aside from the results of the election, as the representative of the said unit for collective bargaining with the Respondent.

3. A majority of the employees in the unit signed the said cards prior to August 31, 1946,[39] and the petition prior to April 12, 1947.

4. The Union requested the Respondent on June 25, 1946; July 3, 1946; July 16, 1946; August 28, 1946; on or about September 10 and 12, 1946; on April 12, 1947; and some time thereafter, to bargain with it concerning the wages and hours and other conditions of employment of the employees in the said unit.

5. In response to each of the said requests to bargain, the Respondent has refused to bargain collectively with the Union, and has not bargained collectively with it.[40]

6. By its refusals to bargain collectively with the Union, the Respondent has violated Section 8(a) (5) of the Act, and has interfered with, restrained and coerced its employees at the Rock Hill plant in the exercise of the rights guaranteed to them by Section 7 of the Act, thus violating Section 8(a) (1) of the said Act.

31 IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in Section III above, occurring in connection with the operations of the Respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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[39] The Respondent was put on notice by the Union that a majority of the employees in the unit had signed the cards. That is the necessary meaning of Fullerton's conversation with Church on or about September 10, 1946. The Union also gave definite notice of the effect of the new cards in its letter to the Respondent dated September 23, 1946.

[40] Considered in the light of the evidence, the Examiner finds that, in addition to its oral rejection of bargaining requests, the Respondent's letters to the Union, dated June 28, July 5 and July 22, 1946, constitute a refusal to meet with the Union for the purpose of collective bargaining.

V. The Remedy

Having found that the Respondent has engaged in unfair labor practices violative of Sections 8(a) (1) and (5) of the Act, the Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the Examiner will recommend that the Respondent, upon request, bargain collectively with the Union, as the representative of such employees, with respect to their rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached, to embody it in a signed agreement.

Having found that the Respondent refused to bargain collectively with the Union as the representative of the said employees and that such refusal interferes with, restrains and coerces the employees in the exercise of the rights guaranteed to them by Section 7 of the Act, the Examiner will recommend that the Respondent be directed, in any like or similar manner, to cease and desist from interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, to the extent provided by law.

Upon the basis of the foregoing findings of fact and of the entire record in this proceeding, the undersigned makes the following:

Conclusions of Law

1. Textile Workers Union of America, CIO, is a labor organization within the meaning of Section 2(5) of the Act.

32 2. All of the Respondent's production and maintenance employees at its Rock Hill, South Carolina, plant, exclusive of clerical employees, superintendents, overseers, second hands, and all other supervisory employees having authority, to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, or having the authority set forth in Section 2(11) of the Act, constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9(b) of the Act.

3. Textile Workers Union of America, CIO, was on May 1, 1946, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid appropriate unit for the pur-

poses of collective bargaining, within the meaning of Section 9(a) of the Act.

4. By refusing on June 28, 1946, and on various occasions thereafter, to bargain collectively with the Textile Workers Union of America, CIO, as the exclusive representative of its employees in the appropriate unit, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(a) (5) of the Act.

5. By interfering with, restraining, and coercing its said employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(a) (1).

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDATIONS

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the Examiner recommends that Highland Park Manufacturing Company of Rock Hill, South Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all of the Respondent's production and maintenance employees at its Rock Hill, South Carolina, plant, exclusive of clerical employees,
33 superintendents, overseers, second hands, and all other supervisory employees having authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, or having the authority set forth in Section 2(11) of the Act;

(b) Engaging in like or similar acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, or to join or assist Textile Workers Union of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of the

employees in the appropriate unit described above, with respect to their rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached, to embody it in a signed agreement;

(b) Post at its plant in Rock Hill, South Carolina, copies of the notice attached to this Intermediate Report marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Tenth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region in writing, within twenty (20) days from the date of the receipt of this Intermediate Report, what steps the Respondent has taken to comply therewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the
34 date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue

orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 31st day of March, 1949.

HERMAN MARX,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

35 WE WILL BARGAIN collectively, upon request, with the TEXTILE WORKERS UNION OF AMERICA, CIO, as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment or other conditions of employment, and if an agreement is reached, embody it in a signed agreement. The bargaining unit is:

> All production and maintenance employees of our plant in Rock Hill, South Carolina, exclusive of clerical employees, superintendents, overseers, second hands, and all other supervisory employees having authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, or having the authority set forth in Section 2 (11) of the National Labor Relations Act, as amended.

WE WILL NOT, by refusing to bargain, or in any like or similar manner, interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist TEXTILE WORKERS UNION OF AMERICA, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing,

and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

HIGHLAND PARK MANUFACTURING COMPANY
(Employer)

Dated..... By.....
(Representative) *(Title)*

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

BEFORE NATIONAL LABOR RELATIONS BOARD

EXCERPTS OF RESPONDENT'S STATEMENT OF OBJECTIONS AND EXCEPTIONS TO INTERMEDIATE REPORT AND RECOMMENDED ORDER

2. The Trial Examiner erred in finding and ruling (I. R. 16-18) that the respondent has unlawfully failed and refused and is unlawfully failing and refusing to bargain with the Textile Workers Union of America, CIO, and in directing the respondent to
36 bargain with the said Union, for that there has been laches and unreasonable and unconscionable delay on the part of the National Labor Relations Board and the General Counsel of the National Labor Relations Board in complaining that the respondent has thus unlawfully failed and refused and is unlawfully failing and refusing to bargain with the Union, a charge to such effect having been filed with the Board on or about September 13, 1946, but no complaint thereupon having been issued by the Board or the General Counsel of the Board until on or about January 10, 1949 (see complaint and petition attached and R. 322).

3. The Trial Examiner erred in finding and ruling (I. R. 16-18) that the respondent is unlawfully failing and refusing to bargain with the Union and in directing the respondent to bargain with the Union, for that even if it was ever proved or established that the Union represented a majority of the respondent's employees at the respondent's Rock Hill, South Carolina, Plant, which, as is hereinafter particularly set forth, the respondent denies, nevertheless there has now been for approximately two years no evidence whatever and no showing of any nature that a majority of the employees at the said Plant are represented by, or desire to be represented by the said Union; and that in such situation it does not effectuate, but violates, the policies of the Act to hold that the respondent is unlawfully failing and refusing to bargain and to direct that upon the Union's request the respondent shall bargain with it as the sole and exclusive representative of the present employees in the said Plant.

BEFORE THE NATIONAL LABOR RELATIONS BOARD
TENTH REGION

In the Matter of

HIGHLND PARK MANUFACTURING COMPANY

and

TEXTILE WORKERS UNION OF AMERICA, C.I.O.

Case No. 10-C-2066

Courtroom,
Federal Building,
Rock Hill, South Carolina
Tuesday, February 15, 1949

Excerpts from Transcript of Testimony and Proceedings

37 Pursuant to notice, the above-entitled matter came on for hearing at 11:00 a.m.

BEFORE:

HERMAN MARX, Esq., Trial Examiner.

APPEARANCES:

WILLIAM J. RAINS, Esq., JAMES W. MACKLE, Esq., 50 Whitehall Street, Atlanta, Georgia, appearing on behalf of General Counsel.

R. S. CAHOON, P. O. Box 2543, Greensboro, North Carolina; DAVE BURGESS, P. O. Box 689, Rock Hill, South Carolina, appearing on behalf of Textile Workers Union of America, the Charging Party.

WHITEFORD S. BLAKENEY, Esq., Johnson Building, Charlotte, North Carolina, appearing on behalf of Highland Park Manufacturing Company, the Respondent.

. . .

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A to 1-K, for identification, were received in evidence.)

. . .

(The documents heretofore marked General Counsel's Exhibits Nos. 2 to 7, inc., for identification, were received in evidence.)

J. H. FULLERTON

A WITNESS called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Rains) * * *

Q. What is your occupation?

A. I am a representative of the Textile Workers Union of America.

Q. How long have you been so connected with the Union?

A. About seven years.

Q. (By Mr. Rains) Do you recall after the election that was held on May 1, 1946, the issuance of the report by Paul
38 Styles, certifying your Union as the bargaining representative of the employees?

A. Yes, sir.

Q. What did you do after that was issued?

A. There was a letter sent to Mr. Church requesting recognition of the Union according to the Decision of the Board, with a proposed contract for negotiation; asking them to meet us for negotiation.

Q. Who is Mr. Church?

A. Mr. Church is, as I understand it, general manager of the Highland Park Mills.

Q. (By Mr. Rains) Was there a refusal to meet with the Union at that time?

A. At that time Mr. Blakeney informed me that they were not accepting or agreeing to the decision or award of the Board.

Q. (By Mr. Rains) Did you ever contact Mr. Church again about recognizing the Union?

A. Yes. After that I contacted Mr. Church again requesting recognition and offering to submit to a card check on our applications—cross-check with the payroll.

Q. Had you done any work of any nature to secure additional authorization cards at that time?

A. After that—at that time Mr. Church wouldn't agree to that. I immediately then went—come back down here and had the workers re-sign, get the workers to sign up again.

Q. You say "at that time." When was the time——

A. This was along about June the—oh, along in the middle of June, or a little later than the middle of June.

TRIAL EXAMINER MARX: What year?

THE WITNESS: 1946.

Q. (By Mr. Rains) Yes.

A. And we signed up the workers on another color of application blank, so there couldn't be any confusion.

Q. Yes.

A. After a period along about I think right after September 1st, or probably the second week in September, somewhere along about the 10th,——

Q. Yes.

A. ——we had these signed up and I went to call, or wrote Mr. Church and asked recognition again on the basis of the new
39 cards that were signed up. If they would recognize those on a cross-check, and they would not.

Q. Did you make any offer to submit those cards for the purpose of that cross-check?

A. I did; yes, sir.

Q. And do you recall what their reason for their refusal was? To submit to that cross-check?

A. Mr. Church at that time, I think, informed me that they had a continuous appeal.

Q. From what?

A. From the decision of the Board.

Q. Yes.

A. I asked him what he meant by "continuous appeal," and he said well, he didn't know. That's what their attorney advised them.

So I called Mr. Blakeney, their attorney, and made the same proposition to Mr. Blakeney, and Mr. Blakeney says, "Well," he says, "we have a continuous appeal."

I asked Mr. Blakeney what he meant by "continuous appeal."

He tried to explain it to me; no matter what happened, it was in a continued appeal; anything that came up in regard to this case.

Q. Yes.

A. It didn't make any difference what it was. They would appeal it.

So I went back—he says, "You see Mr. Church." I went back to Mr. Church again and talked to Mr. Church about having a cross-check according to the applications and their payrolls, and he said no, he wouldn't do it. He was following Mr. Blakeney's advice.

Q. Yes. Now, you spoke of contacting Mr. Church on or about September 10th, as I understood, 1946, with respect to——

A. It was a little after that; little later than that. It might have been a few days later or few days before that.

Q. And that was the time you offered to submit to a cross-check of the authorization cards to the payroll?

A. Yes, sir.

Q. Do you recall about how long it was before that time that you had received all of the authorization cards signed from the various persons that were signing the cards?

A. Well, it was right along—just as soon as we got enough signed up that we were safe, in our opinion, in having the cross-check, I went to Mr. Church and Mr. Blakeney about this and we still signed up some after that.

Q. Did you at any time during the signing up of the employees tell Mr. Church or Mr. Blakeney that you were doing that?

A. Yes, sir. I told them I would do that. I told him I would do that.

Q. And what was your purpose in doing that at that time?

. . . .

A. The purpose was to show them that we wanted to do everything that we possibly could to convince the Company and go along with the Company. That we were trying to avoid any trouble and were willing to do everything that was humanly possible to convince them that the workers over there wanted a union.

. . . .

(The documents heretofore marked General Counsel's Exhibits Nos. 8 and 9 for identification were received in evidence.)

. . . .

Q. (By Mr. Rains) Mr. Fullerton, with reference to your statement that you contacted Mr. Blakeney, or the Company, around September the 10, 1946, and offered to submit to a cross-check of the authorization cards against the payroll, were there any terms connected with that offer to submit to a cross-check? By whom the cross-check would be conducted?

A. Yes. The cross-check—at the time I say the cross-check would be conducted by an impartial person. Somebody not even connected with the Company or Union.

Q. And who was or were those persons to be?

A. I don't remember as I specified any particular person. Somebody, some Conciliation person, or an arbitrator.

Q. (By Mr. Rains) Do you recall referring to a certified public accountant?

A. Yes.

Q. As being a person that could conduct the cross-check?

A. Yes.

Q. Did you have any discussion with Mr. Church with reference to that proposal, after the time you had talked to him about the cross-check offer?

A. It has been so long ago—I think I called Mr. Church
41 and talked to Mr. Church again about it.

Q. About how long after your first discussion?

A. Let me get myself straight on this, or get you straight. After what are you referring to? After September the 10th?

Q. Yes, sir.

A. About two days after September 10th, or three days, I called him again. I told him that the workers were demanding action down here and wanted to know what he was going to do about it and he said he wasn't going to do anything.

Q. And what did he say?

A. He said he wasn't going to do anything.

Q. Was there a strike along about that time?

A. There was a strike on the 16th of September.

Q. (By Mr. Rains) After the strike began, Mr. Fullerton, did you contact the Company or did you receive any communications from the Company of any kind?

A. I think a few days, or about a week after the strike began that I wrote a letter again to Mr. Church asking to meet for the purpose of seeing if we couldn't negotiate a contract and also have a card check again. I think that was about a week after the strike.

Q. Did you get any reply?

A. No.

(The documents heretofore marked General Counsel's Exhibits Nos. 11, 12, 13, 14, 16, and 17, for identification, were received in evidence.)

TRIAL EXAMINER MARX: On the record. Let the record show that the General Counsel and the Respondent's counsel have agreed on a stipulation which it has been agreed between them will be read by the reporter into the record now, and will constitute part of the record. Would you please read it, Mr. Reporter?

(The following stipulation was thereupon read:)

"It is hereby stipulated and agreed between counsel for the General Counsel and counsel for the Respondent that if Charles L. Morgan, H. A. Green, Glenn C. Webb, James Rawdon, Floyd E. Neal, W. R. Kennington, Arthur S. Poole, Louise Collins, B. L. Dawkins, Isabell Morgan, Anner
42 Thompson were placed on the witness stand they would testify as follows:

"That there is no one of 256 persons named on a list to be marked General Counsel's Exhibit No. 18 whose signature to a 'union card' was not witnessed by at least one of the individuals named above, the dates of such witnessing being the date set opposite the names of the persons on General Counsel's Exhibit No. 18.

"The 'union card' referred to is in the form and style of a sample to be marked General Counsel's Exhibit No. 19 except for the printed number appearing in the top, left-hand corner of the same and all hand-written matter appearing on the same.

"It is further stipulated and agreed that the bargaining unit during the period covered by the dates shown on the attached list consisted of 430 employees."

Trial Examiner MARX: On the record. Gentlemen, having heard your stipulation read into the record do you agree that that is your stipulation? Mr. Rains?

Mr. RAINS: I do.

Trial Examiner MARX: Mr. Blakeney?

Mr. BLAKENEY: Yes, sir.

(The documents heretofore marked General Counsel's Exhibits Nos. 18 and 19 for identification were received in evidence.)

Trial Examiner MARX: Let me ask you gentlemen one thing. You may decline to answer, if you wish. I don't know what the intent is, because I don't think it was clearly adverted to, although perhaps intended. Is there any dispute that these 256 people were members of the appropriate unit at the plant?

Mr. BLAKENEY: No, sir.

JAMES H. COLLINS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

43 Direct examination.

By Mr. RAINS:

Q. What is your occupation?

A. In the textile industry in the Rock Hill Printing & Finishing Company.

By Mr. RAINS:

Q. Mr. Collins, are you also a notary public in addition to——

A. Yes, sir.

Q. —other things? Have you ever been called upon by the Textile Workers Union of America in Rock Hill to do any particular work of any kind for them?

A. Yes, sir.

Q. Do you recall what the situation was?

A. It was a blanket affidavit, made in blanket form. I think it was to Mr. Johnston at Charlotte.

By Mr. RAINS:

Q. Mr. Collins, I will hand you General Counsel's Exhibit 21, for identification, and ask you if you know what that is.

A. That is a photostatic copy of the affidavit that I made beginning on—let's see; March 20th, I believe, and ending on March 24, 1947.

Q. I call your attention to certain photostatic copies of signatures appearing on that photostatic copy, and ask you if you recognize those signatures and were present at the time they were placed on the original of that document?

A. Absolutely.

Q. I call your attention to a signature on the bottom of each of the pages there, James H. Collins, or J. H. Collins. Is that a copy of your signature?

A. It is.

Q. I call your attention to the last page of General Counsel's Exhibit 21, for identification, which purports to be a certification or

statement bearing the signature, James H. Collins. Is that your signature, a copy of your signature?

Trial Examiner MARX: You mean a photostatic copy.

By Mr. RAINS:

Q. Photostatic copy of your signature.

A. Yes, I believe that is a copy of the original.

44 Q. Have you read that certification? Will you do so, and state whether or not it is true?

A. That is true.

Cross-examination.

By Mr. BLAKENEY:

Q. Mr. Collins, you say you are a notary public?

A. Yes, sir.

By Mr. BLAKENEY:

Q. Are you connected with the Textile Workers Union of America, CIO?

A. Yes, sir.

Q. What is your connection with them?

A. I am a member of Local 10 of the Rock Hill Printing & Finishing Company. Also, a member on the auditing committee.

Q. Auditing committee?

A. Of that Union.

Q. How long have you been on that committee?

A. I believe this makes the third year.

Q. Do you happen to know why it was they went over and got you to be notary public on this paper?

A. Well, I live down there in that section and I will say two-thirds of the people I did know personally, and that is what they wanted——

Q. Who come and got you?

A. I was asked to come to the National Union office on Trade Street.

Q. What did you do?

A. Well, we agreed that the best possible way for everybody involved—I think the strike had been going on at that time for several

months, and the best possible way would be to begin in the commissary where they got their groceries on Thursday, and that was the Green's grocery on East White Street here in Rock Hill, and this building, this store building that they had the commissary in was partitioned off. It had part of it they used as a commissary and the other part they used as a store. I was out in the front—in the store part along with Mr. Whelchel. He was to identify the people that I didn't know personally.

45 Q. Did you stay at the commissary more than one day, or just——

A. One day, on Thursday, the day of the commissary, that is all.

Q. And the rest of the time you were riding around finding them where you could?

A. That is right.

Q. Usually at their homes?

A. Yes, sir.

Q. Now, when you would get up with a person, what would you say to him?

A. Well, I would just——

Q. For instance, Isaac Sims, what did you say to him?

A. I would tell him I had an affidavit that I would like for him to read. If he couldn't read, I would like to read it to him and see if he would like to sign it.

Q. But they all read it or you read it to them, one way or the other?

A. I did. If they wanted me to read it, I did.

By Mr. BLAKENEY:

Q. But you didn't say anything to them to the effect: Is this your voluntary act? Your free will? Do you freely assent? Do you swear to this, or do you acknowledge it in any way? None of that was done?

A. I think I was pretty clear to people; all of them.

Q. Think what was pretty clear?

A. That it was their own, voluntary act, if they signed. They had the privilege to read, or me to read it to them, which was done. If they were unable to read, I read it to them and if they accepted it like that, then they signed it. They signed the paper. If they didn't like it, they didn't sign. It was left entirely up to them, as to whether or not they wished to sign the paper.

Mr. RAINS: Yes, Mr. Examiner. I propose this amendment in amplification to that stipulation, to this effect.

"That each of 256 of the persons named on General Counsel's Exhibit 18 was seen to sign said 'Union Card' by at least one of the persons whose names are set forth in this stipulation."

46 Trial Examiner MARX: All right. Is that agreeable, Mr. Blakeney?

Mr. BLAKENEY: Yes, sir. I think the stpulation as written is clear, but it is negatively phrased, and this is an affirmative phrasing of the same thought content and I agree to this affirmative statement of it.

LOYD WHELCHEL, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. RAINS:

Q. And what is your occupation?
A. Representative of the Textile Workers Union of America.

Q. Did you enjoy that same capacity in 1947?
A. That's right.
Q. Do you recall a strike at the Rock Hill plant of the Highland Park Manufacturing Company in 1947?
A. I do.
Q. Do you know the date the strike began?
A. I believe it was September 16th, was the day of the month.
Q. 1946?
A. Yes, sir.

Q. Yes. During the course of the strike, did you at any time have any occasion to prepare any petition?
A. I did.
Q. Would you describe what you did in that respect?
A. Well, there was some worry in the early part of May, I think it was. I caused to be prepared—it was, at least, prepared under my direction, a petition which stated in effect that the employees still considered themselves members of our Union and—even though they had been out for some time on strike, they still wanted our Union to bargain for them and at the same time requested their employer to do so.
Q. I will hand you General Counsel's Exhibit 21, for identification, and ask if you recognize that document.
47 A. This is a photostatic copy of the petition that I caused to be executed.

Q. I will ask you to read the—to whom is that petition addressed?
A. To Mr. Johnston, the Highland Park Manufacturing Company in Charlotte.

Q. When that work was completed, what did you do with the original of the document you hold in your hand?
A. I mailed it to Mr. Johnston after I had had these photostatic copies made.

By Mr. RAINS:

Q. Now, with respect to the strike, do you recall the occasion of the last meeting of the Union members prior to the strike?
A. I do.
Q. When was that?
A. That was on September 15th; a Sunday.
Q. Yes. Who called the meeting?
A. Mr. Jim Fullerton.
Q. And what was discussed and done at that meeting?
A. Mr. Fullerton reported that the Company had failed to bargain, refused to bargain with the Union.

By Mr. RAINS:

Q. Proceed, Mr. Whelchel.
A. Afterwards, a motion was made and seconded and passed unanimously that the employees go out on strike on Monday at 2:00 o'clock until the Company agreed to recognize the Union and bargain collectively with their representatives.
Q. Do you know when the strike ended?

A. I believe it was the early part of May. Somewhere around the 3rd or 4th. The exact date, I don't quite remember. That's 47.
Q. And had the Company on that occasion, or after that time, recognized the Union as the exclusive bargaining agent?
A. They had not.

(The document heretofore marked General Counsel's Exhibit No. 21 for identification was received in evidence.)

48 T. W. CHURCH, JR., a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. RAINS:

Q. And what is your occupation?

A. Secretary-Treasurer of the Highland Park Manufacturing Company.

Q. Did you occupy the same position during 1946 and 1947?

A. Yes, sir.

Q. How long have you been with the Highland Park Manufacturing Company?

A. Since 1931.

Q. I believe the Charlotte office is the main office for the two plants in Charlotte and one in Rock Hill. Is that correct?

A. Yes, sir.

Trial Examiner MARX: Intent is not involved here because the Company says if I get its position correctely, we did not bargain with the Union. There is no denial of that, if I appraise the evidence so far correctly.

Mr. BLAKENEY: That is not denied.

NELL MCDONALD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. Do you work at the Highland Park Manufacturing Company?

A. Yes.

Q. Did you work there before the strike in 1946?

A. Yes.

Q. There has been introduced in evidence in this case a document which is referred to as the General Counsel's Exhibit No. 21, the same being a petition addressed to Mr. Horace Johnson and signed by a number of people, and on it there is what purports to be
49 your signature. Do you recall whether or not you did sign that paper or petition?

A. I don't recall.

Q. Well, I will show it to you and ask you if it is your signature. See if it refreshes your recollection.

A. Yes, that——

Q. Is that your signature?

A. It looks like it.

Q. Well, would you say that is a photostatic copy of your signature?

A. Yes, that's right.

Q. Now, Mr. James Collins testified in substance that you signed that in his presence after he had read it or after you had read it in his presence; after he had read it to you or after you had read it yourself, in his presence. Is that true or not?

A. That is not true.

Q. Now, did you, before the strike at the Highland Park, sign, before or about the time of, or anywhere along at that time, sign a—what's called a Union card? That is, a card joining the Union and authorizing the Union to represent you?

A. Yes.

Q. Will you state to the Examiner what were the circumstances under which you signed and why you signed? What led you to sign?

A. Well, there was one particular man right close to me——

Q. A little louder.

A. There was one particular man that run a job right close to mine, and every few minutes he would come up and call me names and he told me he was going to call me names until I signed.

Q. How long did that go on?

A. Well, I went to work sometime in May, I think, and I signed in August.

Trial Examiner MARX: What year, please? What year?

The WITNESS: During 1946.

Cross-examination.

By Mr. RAINS:

Q. Mrs. McDonald, do you recall the circumstances of your signing the petition, General Counsel's Exhibit 21?

50 A. I don't even remember that.

Q. You don't remember the petition at all?

A. No.

Q. But you recollect that is your signature on the petition?

A. Yes, that is my signature.

J. R. McDONALD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. You are the husband of Mrs. Nell McDonald, who was just on the stand?

A. That is right.

Q. Did you work down at Highland Park in 1946 and 1947?

A. Yes.

Q. Do you write?

A. No, sir.

Q. Do you read, either?

A. No.

Q. Here is a paper writing which is introduced in evidence as the General Counsel's Exhibit No. 21, and purports to be a petition and purports to bear your signature; no mark, just J. R. McDonald; and Nell McDonald's signature right under yours. Do you recall, what is your recollection as to how that paper came into her possession?

. . . .

A. They wanted me to sign it out at the commissary, and I told them I couldn't write, and I carried the paper to the house.

Trial Examiner MARX: Your house?

The WITNESS: Yes, sir.

Trial Examiner MARX: Go ahead, sir.

A. And my wife signed it for me and her both.

. . . .

By Mr. BLAKENEY:

Q. Did Mr. Jim Collins go with you?

51 A. No, sir.

Q. Did she do any signing before Mr. Jim Collins?

A. If she did, I didn't know it.

Q. What signing she did on the paper, did she do it then and there at the house in your presence?

A. Yes, sir.

. . . .

ARTHUR THOMAS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. There has been introduced in evidence a list on which appears your name as having signed a Union card on August 3, 1946, witnessed by a Mr. Harry Green. Did you sign any Union card on or about August 3, 1946?

A. No, sir. It was after August.

Cross-examination.

By Mr. RAINS:

Q. You say you don't believe you signed your name?
A. No. I can't write so well. I think Mr. Green signed it for me.
Q. But he signed it with your permission?
A. That's right.
Q. Can you read?
A. No.
Q. You can't read nor write?
A. Not enough to get by. I know my name. That's about all.
Q. Can you read dates? You didn't attempt to read the card?
A. No. It weren't no use.

WALTER SWEATT, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

52 Direct examination.

By Mr. BLAKENEY:

Q. Either before or during the strike did you sign any kind of a card or slip?

A. Yes, sir; I signed a slip—a book——

Q. Did you understand, when you signed that, you were signing to join the Union, or to authorize the Union to represent you, or——

A. Whenever I signed the book, I thought it was for to keep

from striking. That's what I thought. I didn't know it was to sign no union, nor nothing like that.

JOHN SHAVER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. Had you joined the Union before the strike began?
A. No, sir.
Q. Did you join the Union after the strike began?
A. Yes, sir.
Q. What was it that caused you to join the Union?
A. Well, they put out so many nails I couldn't get there. Had five flat tires getting to work.

By Mr. BLAKENEY:

Q. Did you speak to anybody representing the Union in regard to the nails you are talking about?
A. Well, no, sir, I didn't; not until I signed the Union card so the children could go back to school again. They cut the school bus off.

Trial Examiner MARX: No. Did somebody tell you that they quit coming for that reason?
The WITNESS: They didn't tell me that they quit coming for that reason, but a man tears up his tires, he ain't going to come back.

53 Q. Did you talk to anybody about those nails at the time you joined?
A. Yes, sir.
Q. Who?
A. I told Mr. Morgan, "Let's stop the nails." He said, "All right." There wouldn't be any more.

Cross-examination.

Trial Examiner MARX: Who is Mr. Morgan?
The WITNESS: Charlie Morgan. He is in Great Falls now, I understand.
Trial Examiner MARX: Did you understand him to be connected with the Union?
The WITNESS: Yes. I knew he was connected with the Union.

By Mr. RAINS:

Q. You don't know who put those nails out there, do you?
A. No, sir.
Q. For all you know it could have been anybody?
A. Correct.

Recross-examination.

By Mr. RAINS:

Q. Mr. Shaver, can you read?
A. A little.
Q. Can you write your name?
A. Yes, sir.
Q. Do you remember talking to the investigator from the Labor Board during the strike?
A. Yes, sir.
Q. Did you tell him about the nails?
A. No, sir.
Q. Why didn't you tell him about the nails?
A. Because I thought he was on the opposite side.

JAMES EDWARD KELLEY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

54 Direct examination.

By Mr. BLAKENEY:

Q. Do you recall signing a Union card, or card authorizing the Union to represent you?
A. Yes, sir.

By Mr. BLAKENEY:

Q. There is in evidence, here, a list on which your name appears as having signed such card in the presence of Mr. Charles Morgan. Did you sign that card in the presence of Mr. Charles Morgan?
A. No, sir.

Cross-examination.

By Mr. RAINS:

Q. Who did you sign the card for, Mr. Kelley?
A. Leonhardt.

Q. Where were you when you signed it?
A. At my house.
Q. Was that before the strike?
A. Yes, sir.
Q. Did you attend any Union meetings after you had signed the Union card?
A. About one, I believe.

T. W. CHURCH, JR., a witness called by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. Mr. Church, you are connected with the Highland Park Manufacturing Company?
A. Yes, sir.
Q. How long have you been connected with that Company?
A. Since 1931.
Q. What is your capacity with respect to the Rock Hill plant of that Company?
A. Well, I am the active head. More or less the General Manager.
Q. Are you the top official in the Company who is active, in charge of the management of the Rock Hill plant?
55 A. Yes, sir.
Q. There has been introduced in evidence by the General Counsel a paper writing marked his Exhibit No. 3 entitled "An Agreement for Consent Election." I will ask you to look at it and state whether that is a copy of the paper you signed in behalf of the Highland Park Company?
A. Yes, sir.
Q. Pursuant to that so-called agreement for consent election, was an election held at the Rock Hill plant of the Company?
A. Yes, sir.

By Mr. BLAKENEY:

Q. Do you recall—and this is in your evidence, but merely to fill in the outline of matters, here—do you recall what the counted ballots were for the Union and against the Union?
A. 197 for the Union; 194 for the Company; and the challenged ballots.

Q. Among the challenged ballots, were there seven of those challenged ballots?

A. Seven ballots of the drawing-in girls that lived in Charlotte.

Q. Now, after the election had been held and the vote was, as you say, did the Company recognize and deal and bargain with the Textile Workers Union of America, CIO?

A. No, sir.

. . .

By Mr. BLAKENEY:

Q. What position did the Company take or express with respect to its dealing, recognizing and bargaining with the Union?

A. We told the Union and Mr. Joy——

Q. Who is Mr. Joy?

A. He is a Labor Board field man, I presume you would say, who came to see us.

Q. All right.

A. We told them that we would not bargain with the Union until the seven votes were counted of the employees who were on the payroll and were eligible to vote.

. . .

By Mr. BLAKENEY:

Q. After the election was held, did you have some several—different conversations with any representative of the Union?

A. Yes, sir.

Q. Who?

56 A. Mr. Fullerton, I believe is the only one.

Q. Was there more than one of such conversations?

A. Yes. There was, I would say, three or four telephone calls and probably two or three conferences.

Q. And what did Mr. Fullerton, in behalf of the Union, ask you to do?

A. Well, we had received a contract, a proposed contract from him. He asked us to bargain, discuss the contract.

Q. Did you state to him what the Company's position was with respect to that request?

A. We told him that we would not bargain with him at all until these votes were counted. That we thought the people had a right to vote. We knew they did, and it was just an arbitrary action saying they couldn't.

Q. You say you did have a conversation with a representative of the Board, Mr. Joy, on the same subject?

A. Yes, sir.

Q. What, if any, position did you express to him on that same matter?

A. We told him exactly the same thing.

Q. Now, at any time, in any conversation with either the— or any other communication, whether in writing or orally, has the Company taken any position other than that, either with Union representatives or Board representatives?

A. We told them this: We told both the Union representative and the Board representative that if they would count those votes, that we would abide by the decision and if it was in favor of the Union, we would bargain, and we were led to believe they would be counted.

Q. Well, what do you mean by "led to believe they would be counted"?

A. Well, the day after the election, the night of the election, I should say, Mr. Joy asked several of us to meet in our office the next morning to discuss these challenged votes.

We went down there and had a short talk with him.

Q. What did he tell you was the purpose of him asking you to meet?

A. Well, he wanted to ask some questions about these girls. The votes that he had——

Q. What girls?

A. The drawing-in girls, seven of which he had challenged, and he had the votes—ballots in a sealed envelope.

Q. Seven of which had been challenged?

57 A. Yes, sir.

Q. All right. Now, what was said and done on the occasion of that meeting?

A. Well, he asked a good many questions about the girls and we answered them the best that we could, and we left with the understanding that we would be allowed to present evidence and facts to the Labor Board in regard to them and that when it was decided that the votes would be opened, that they would be opened in Atlanta in front of a representative of the CIO and a representative of the Company.

Q. On that occasion, did you request opportunity to present the facts and the evidence, or not?

A. Yes, sir.

Q. How?

A. Yes, sir.

Q. Did you understand that you were then and there being given such opportunity?

A. Well, I understood we would be given opportunity.

Trial Examiner MARX: Mr. Blakeney, his understanding, I will tell you right now, may not be of very much assistance unless he relates exactly what Mr. Joy, to the best of his recollection, told him bearing on the subject, because his understanding may very well be a conclusion and would not be helpful.

By Mr. BLAKENEY:

Q. State to the best of your recollection what was said in regard to your request to have opportunity to present the facts and the evidence in regard to the eligibility of these seven people.

A. Well, I can't remember the exact words, but I asked that we be given the opportunity to present the complete facts and the complete picture to either the Board or whoever it was necessary.

I can't remember Mr. Joy's words, but I think he said that we would be given that opportunity.

Q. Now, irrespective of what you think, will you state what was the substance of what he communicated to you on whether you would or wouldn't have an opportunity.

A. Well, he said we would have, or words to that effect.

Q. Would have what?

A. Opportunity to present the facts.

Q. All right. Now, did you, on that occasion, at that meeting, present the facts or not?

A. No, sir. We didn't go into any detail at that time.

Q. Has the Company ever been given an opportunity to
58 give facts and evidence in regard to the—in regard to whether or not the seven persons you refer to were or were not employees of the Rock Hill plant?

A. No, sir.

Q. At the time of the election.

A. No, sir.

Trial Examiner MARX: Excuse me. What are drawn-in girls? What did you mean by that phrase?

The WITNESS: They are girls that take each thread and draw in a harness. It's a ticklish hand job. Taking a thread of yarn and putting it on a hook and drawing it in a metal harness; wire.

By Mr. BLAKENEY:

Q. Now, there was a strike commenced at the Company's Rock Hill plant about September 16, 1946?

A. Yes, sir.

Q. Did a substantial number of the Company's employees, at the beginning of that strike, remain away from work?

A. Yes, sir.

Q. Do you know whether a majority of them did remain away from work?

A. Yes, sir.

By Mr. BLAKENEY:

Q. Now, along about the time of the strike did the Union or the Board, or any representative of the Board, suggest to you or any

other representative of the Company, that the Union be recognized and bargained with upon the basis of a check of alleged new or recent Union cards signed up?

A. I don't remember just the date, but Mr. Fullerton asked that we do that.

Q. Mr. Fullerton asked that you do that?

A. Yes, sir.

Q. Did you agree to do so?

A. No, sir.

Q. What did you state was your position with respect to that?

A. We told him that we would rely on the election and——

Q. What did you state was your position or reason for not agreeing to the card check proposition?

A. Well, we wouldn't know the authenticity of the cards.

59 Q. Of the cards.

A. They weren't going to bring the cards and show them to us. They proposed we have an arbitrator or auditor, I believe, to check the cards against the payroll.

Q. What, if anything, would you be able to know as to whether the signatures were genuine?

A. We wouldn't know.

Q. Later on was there a petition presented to the Company with a large number of names on it and purporting to have been notarized?

A. Yes, sir.

Q. What position did you take with respect to that petition?

A. We didn't recognize that.

Q. Well, but what? What did you——

A. We didn't recognize that because we didn't know whether those people had signed that or whether they had been forced to sign it, coerced——

I did tell Mr. Fullerton.

By Mr. BLAKENEY:

Q. You told him what?

A. We questioned the signatures and questioned whether they were signed with their own free will and accord.

Q. Did you make any inquiry or investigation as to the person who purported to act as notary on it?

A. Yes, sir. We asked about Mr. Collins. We found out that he was a Union fellow.

Q. What do you mean, "A Union fellow"?

A. Belonged to the Union over to the bleachery.

Q. Yes.

A. And that put more doubt in our mind. Whether they would get a notary public with that connection.

Q. Well, did you make any further inquiry or investigation as to Mr. Collins' activity in connection with the signing of the paper—of the petition?

A. There was quite a bit of talk about it, but I don't believe I remember anything about it.

By Mr. BLAKENEY:

Q. Now, did you, at any time, decline to consent to and abide by a new election?

A. Yes, sir. I think that the Union proposed a new election. I believe, And we still took our stand that we should get the final result of the old election by counting the votes and we
60 agreed if they did count the votes, we would abide by that.

Trial Examiner MARX: Was this during the strike, sir?

The WITNESS: I believe it was. I believe it was.

Cross-examination.

By Mr. RAINS:

Q. Mr. Church, you said the night of the election Mr. Joy called a meeting for the next morning?

A. He just asked that we meet the next morning. He wanted to ask us some questions about these girls.

Q. Yes. Of course, all the parties knew that some ballots had been challenged in the election?

A. Yes, sir.

Q. Did you meet at the Rock Hill plant?

A. In the Rock Hill plant; yes, sir.

Q. In the office of the plant?

A. Yes, sir.

Q. And I believe you stated that he asked a great many questions.

A. He asked to see the payrolls, and where these girls live, and questions of a similar nature; yes, sir.

Q. But do you recall saying that he asked a great many questions?

A. Well, I don't know how many, but—Yes; I would say he asked quite a few questions.

Q. But you say you didn't go into any detail at that time?

A. No, sir. It was our understanding that we would later have a chance to put the facts before the Board in Atlanta. That he was up there to run the election.

By Mr. RAINS:

Q. Now, was Mr. Blakeney present at that meeting?

A. Yes, sir. We called him down to listen in. He wasn't there the night before.

Q. No, but he was there the morning in the meeting, following the election, with Mr. Joy?

A. Yes, sir.

Q. And I believe the Union was represented in the meeting, too, were they not?

A. Yes, sir.

61 Q. I think the majority of the representatives were Company people, weren't they?

A. I wouldn't say that. I don't remember how many of the Union people were there. We had our superintendent and myself and Mr. Blakeney.

Q. And who else for the Company; do you recall?

A. The general superintendent from Charlotte. Yes. He was there.

Q. Did you have your Company observers in the election? Were they in the meeting?

A. I don't remember. They may have been. I don't know.

Q. You don't remember? I understood you to say that you think that Joy said you would be given an opportunity to present the complete facts.

A. He either said that or something to that effect. We were led to believe that.

Q. And you say you have never been given an opportunity to present the facts since that time?

A. No, sir.

Q. Do you have any recollection or knowledge of the request of the Respondent to the Regional Director on May 8th stating that if the challenges should be resolved against the Company, then they wanted a formal hearing before a Trial Examiner on the matter?

A. That we asked that?

Q. Yes. The Respondent.

A. Yes, sir.

Q. Then you recall the certification came out on May 29th, 1946?

A. I remember it coming out.

Q. That was some 28 days later; from May 2nd.

A. Yes, sir.

Q. Did you, at any time, from May 2nd until May 29th, seek to send to the Regional Director any of this evidence you claimed bore on the status of the challenged persons?

A. I don't remember that we did. We didn't hear anything from them. It was our understanding that we would have an opportunity to do this.

Q. Were you waiting to see whether the challenges would be resolved against the Respondent before you put on the evidence with respect to the challenged persons?

A. I don't know about that.

Q. Mr. Church, then, as nearly as you can recall, what
62. did Mr. Joy say when he opened the meeting or first commented at the meeting on May 2, 1946?

A. I couldn't answer that. It would be a guess.

Q. Well, tell me again, what did you understand was the purpose of that meeting?

A. I understand the purpose of the meeting was for him to get some information in regard to these challenged ballots.

Trial Examiner MARX: Did you give him the information?

The WITNESS: We gave him anything he asked for; yes, sir.

Trial Examiner MARX: No. Did you give him all information in your possession about those challenged ballots?

The WITNESS: I wouldn't say we gave him all in our possession. We gave him everything he asked for.

Trial Examiner MARX: Can you tell me now what you gave him?

The WITNESS: No, sir; I cannot. Sorry. I remember he wanted to check the payrolls. He did that. That's one thing I definitely remember.

Trial Examiner MARX: But did you tell him what your position was on the challenged ballots?

The WITNESS: We told him that those girls were supposed to vote, because the day before the election him and the Union Committee was in the office, met with us, they went carefully over the payroll and passed on everybody on the payroll, that they could vote, the payroll of April 12th. That is what was asked for in the Consent Election.

Trial Examiner MARX: You gave him that information?

The WITNESS: Yes, sir.

Trial Examiner MARX: My question is, if you know, whether Mr. Joy looked at the payroll after you expressed the view to him that these challenged seven should have voted?

The WITNESS: I feel sure he did. I am sure he did.

Trial Examiner MARX: Go ahead, Mr. Rains.

By Mr. RAINS:

Q. There was some discussion at the meeting with respect to these same girls having been transferred from Charlotte to Rock Hill on previous occasions in previous years, was there not?

63 A. Yes, sir, I remember that.

By Mr. RAINS:

Q. Do you know who carried on the conversation, Mr. Church, with respect to the previous operations of the girls from Charlotte in this Rock Hill plant?

A. Well, Mr. Joy and either myself or our superintendent down there, I don't know which.

Q. Did you discuss the applicability of group insurance with respect to those employees at this plant and at the Charlotte plant as it applied on former occasions when those girls had come from the Charlotte plant to the Rock Hill plant?

A. I don't remember that, but there is possibility we did.

Q. Do you remember discussing anything about mileage being paid to those girls?

A. I know now that was brought up and we told Mr. Joy there was mileage paid.

Q. From Charlotte to Rock Hill?

A. That is right.

Q. And with respect to the hours that were worked including the driving time from Charlotte to Rock Hill do you recall whether you stated anything to Mr. Joy in that regard?

A. That is right. I also stated to Mr. Fullerton on questioning from him.

Q. On the same occasion?

A. He asked me why we did it. I told him we had to do it because there wasn't any drawing-in hands in Rock Hill.

Q. Do you recall discussing with Mr. Joy on that occasion as to the piece work basis or hourly rate record of the Charlotte plant as applying to these seven girls and it being different from the piece work rate or the hourly rate as applied to the Rock Hill plant?

A. I don't remember it, but we probably did, because they were paid piece work rate at Charlotte and we paid hourly rate at Rock Hill.

Q. Do you recall displaying any Social Security records at that time to Mr. Joy?

64 A. I don't recall, but we probably did if he asked for them. They would have been available.

Q. Do you remember discussing with Mr. Joy the differences in the manner in which the girls from Rock Hill were paid and the other girls; the drawing-in hands in the Rock Hill plant were paid

different in check, time of payment, or period covered, anything of that sort?

A. I think I do. I don't remember the detail.

By Mr. RAINS:

Q. You say you, rather the Company, excuse me, wouldn't do anything about this offer of the Union to submit itself to a card check of its application cards against the payroll because you didn't know as to the authenticity of the cards or whether or not the persons had signed under coercion——

A. That is right.

Q. . . . Did you have access to any samples of handwriting of most of your employees in this plant?

A. We would have, yes.

Q. Which could have been submitted to an arbitrator for comparison?

A. Probably could have. Well, now, I don't say all the employees. The ones that had signed up for insurance or something like that, we probably have their signature.

Q. Does the Company pay by check?

A. Yes, sir.

Q. Do the employees endorse the checks?

A. They are supposed to. These stores consider them as cash items, though.

Q. And now we are referring to General Counsel's Exhibit 21 when we refer to the Petition, are we not? That is the photostatic copy which has been introduced in evidence heretofore.

A. Yes.

Q. I want to be sure.

A. We got the original copy.

MILDRED FLOYD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

65 Direct examination.

By Mr. BLAKENEY:

Q. Where do you work?

A. Highland Park, No. 2, Rock Hill.

Q. What is your job?

A. Drawing-in hand.

Q. How did you come to be a drawing-in hand at the Rock Hill plant for the Highland Park Company?

A. I asked for a job there. Had my sister ask for a job.

Mr. RAINS: I think this point, Mr. Examiner, seems to be objectionable; this early point.

Trial Examiner MARX: Well, the time hasn't been fixed.

Mr. RAINS: All right.

Trial Examiner MARX: As to when she applied for a job. It is usually preliminary to find out who a witness is. I will assume the question is of that nature.

Mr. RAINS: All right.

By Mr. BLAKENEY:

Q. What is the first day you worked at the Rock Hill plant, if you remember?

Trial Examiner MARX: Now, Mr. Blakeney, I am going to ask you for the purpose of offering this testimony. What is the object of that question?

Mr. BLAKENEY: To prove that she was on the payroll of this plant prior to April 12, 1946, the date fixed in the consent election agreement as the date for determination of who should be entitled to vote.

Trial Examiner MARX: Would the purpose of that testimony be to present facts enabling the Board to determine whether in fact she was entitled to vote, contrary to the ruling of the Regional Director?

Mr. BLAKENEY: Yes, sir, I think that would necessarily follow. The Regional Director ruled she wasn't entitled to vote, and I want to present evidence to the effect that she was all that the consent agreement called for in defining who could vote; namely, that she was an employee of the Rock Hill plant on April 12, 1946, that being the definition in the consent election agreement as to who should vote.

66 (The document heretofore marked Respondent's Exhibit No. 1, for identification, was received in evidence.)

Trial Examiner MARX: I will permit you to make any offer of proof you feel you wish to, but on the basis of the offer of proof as you gave with respect to this witness, I am prepared to make a

ruling and, also, if you wish to extend the offer to any other witnesses whom you wish to name for the record, in case the objection is sustained.

Mr. BLAKENEY: Yes.

Trial Examiner MARX: I have given the matter some consideration during the recess, and I have had occasion to read in the brief time available to me some cases, and I have come to the conclusion that the objection to testimony of that sort should stand.

My reasons are, in brief, but not exhaustively stated, that if the agreement which was entered into by the Respondent is to have any meaning at all, it should be given effect. Moreover, the Board's Rules and Regulations, more particularly Section 203.54 of Series 5, expressly provides that the finding of the Regional Director shall be conclusive.

The taking of testimony from the last witness as to her actual voting status would amount to a subversion, in my judgment, of the Rules of Administrative Procedure and of the sanctity to be given to the agreements responsibly entered into by the parties.

For the reasons indicated, I feel it isn't open to me to enter into an inquiry as to the actual voting status of the seven employees.

RESPONDENT'S OFFER OF PROOF

Mr. BLAKENEY: In view of the Examiner's last ruling, the Respondent makes the following offer of proof; namely, that if E. D. Newton, Arthur Jerrett, Fred McNinch, T. W. Church, Jr., Gertrude Boyd, Virginia Moore, Pauline Rice, Josephine Wilson, Phronie Fisher, Myrtie Corley, Louise Bailes, Mildred Floyd, Gretchen Fisher, and Alec McFadden were permitted to testify, and the Respondent offers said witnesses as being present and ready to testify as follows:

That they would testify that during the early part to the
67 middle of March, 1946, the Rock Hill plant of the Respondent was commencing a change-over in the nature of its product from plain goods to fancy and striped goods; that such change-over in the nature of the plant's product called for and required the use of additional drawing-in hands; that drawing-in hands were scarce and difficult to find at that time; that the Rock Hill plant had been inquiring for some weeks prior to the period above mentioned of all persons who sought employment with it as to whether they were drawing-in hands or could do drawing-in work; that the

Rock Hill plant had made diligent inquiry in various directions in an effort to obtain drawing-in hands; that the Company had not been able to obtain any additional drawing-in hands in the immediate vicinity of Rock Hill; that shortly prior to the middle of March, 1946, the Company's Charlotte plant had installed and was putting into operation certain new machinery known as Barber-Coleman Automatic drawing-in machines; that the Company Charlotte plant at the time referred to was and for many years had been a fancy goods or striped goods plant, and by reason of that being the nature of the Charlotte plant's product, had for years employed a number of drawing-in hands, such number being in the neighborhood of 75 such hands; that as the result of the installation and commencement of the operation of the machines above referred to, the need in the Charlotte plant for drawing-in hands was declining and that a large proportion of said drawing-in hands were not working full time at about the middle of March, 1946; that Mr. Newton, the superintendent of the Rock Hill plant, at various times had consulted and talked with the superintendent of the Charlotte plant in regard to getting from some source drawing-in hands for the Rock Hill plant in view of changing over of the nature of the product at the Rock Hill plant; that the superintendent of the Charlotte plant informed Mr. Newton, superintendent of the Rock Hill plant, as to the situation in the Charlotte plant in respect to the installation and beginning operations of the aforesaid machines, and that the superintendent of the Rock Hill plant then and thereupon, about the middle of March, 1946, communicated with four of the persons named above, namely, Gertrude Boyd, Virginia Moore, Pauline Rice, and Josephine Wilson, and inquired of them as to whether they would be willing to come to work at the Company's Rock Hill plant as drawing-in hands at the Rock Hill plant, and that all of the four stated that they desired to do so; that thereupon
68 said four employees quit their employment at the Company's Charlotte plant and hired as employees to the Company's Rock Hill plant; the first day of their working at the Company's Rock Hill plant being March 25, 1946; that shortly thereafter others of the above named individuals, namely, Phronie Fisher, Myrtie Corley, Louise Bailes, and Mildred Floyd notified the superintendent of the Rock Hill plant that they, too, would like to become hired as drawing-in hands at the Company's Rock Hill plant; that they stated that the reason they desired to do so was that they had been told by Gertrude Boyd, Virginia Moore, Pauline Rice, and Josephine Wilson what the drawing-in work was at the Rock Hill plant, the earnings to be had, and the prospects for continued employment in the drawing-in work; that they knew that the drawing-in work in the Charlotte plant was diminishing and curtailing.

Mr. BLAKENEY (Continuing): That upon the above-named

Phronie Fisher, Myrtie Corley, Louise Bayles, and Mildred Floyd notifying the Superintendent of the Rock Hill plant that they desired to become drawing-in hands at the Rock Hill plant, they were hired in such capacity.

That they quit their job at the Charlotte plant and became hired as employees at the Company's Rock Hill plant. That the first days that they worked at the Company's Rock Hill plant were respectively as follows:

Myrtie Corley, April 1, 1946;
Mildred Floyd, April 1, 1946;
Louise Bayles, April 6, 1946;
Phronie Fisher, April 8, 1946.

That thereafter two additional persons who were working as drawing-in hands at the Company's Charlotte plant; namely, Gretchen Fisher and Ellie McFadden; likewise and in similar manner made application to the Superintendent of the Company's Rock Hill plant for work as drawing-in hands in the Rock Hill plant and were similarly hired in at the Rock Hill plant and similarly quit their employment at the Company's Charlotte plant.

That the first days on which the two last named individuals worked at the Rock Hill plant were May 6, 1946 in each instance.

That upon thus quitting their employment in the Charlotte plant, and becoming hired as employees at the Rock Hill plant, the above-named individuals severed all connection of every nature with the Charlotte plant and retained no connection of any nature therewith.

69 That more particularly they were all taken off the payroll of the Charlotte plant. That employment severance cards were made out for all of them and filed in the Company's Charlotte plant.

That their Employee Insurance which they had been carrying at the Company's Charlotte plant was terminated and cancelled and that on all reports and records kept by the Company's Charlotte plant with respect to such employees; namely, Federal Social Security cards, and reports, and North Carolina State Unemployment Compensation cards and reports, their names were dropped as of the dates they quit their work in the Charlotte plant.

That all of the named women, upon being employed as above stated at the Rock Hill plant, were put on the payroll of the Rock Hill plant and became listed as employees of the Rock Hill plant on all the Rock Hill plant's Social Security cards and reports and State Unemployment Compensation cards and reports.

That they were offered the right to take Employee Insurance at the Rock Hill plant and accepted such insurance and applied therefor but were required to wait 60 days before obtaining such

insurance and that such 60-day wait was uniformly required of all persons who made application for employment and became hired as employees at the Rock Hill plant.

That the Rock Hill plant, from the date of the said individuals commencing work in the Rock Hill plant, began to report them on all its employee reports to State and Federal Government.

That they, from such dates, began to be figured in on the Rock Hill plant's Workmen Compensation Insurance premiums.

That they they, from the date of their commencing work at the Rock Hill plant, began to be paid by check drawn on a Rock Hill bank, as are all other employees of the Company's Rock Hill plant.

That the only differences in any respects between these individuals, after they commenced to work at the Rock Hill plant, the only differences between them with respect to having status of employees at Rock Hill and other persons working at the Rock Hill plant are that they came from longer distance to work than most of the Rock Hill employees but that many other of the Rock Hill plant employees did come for distances of considerable size to their work and some of the other employees as far as these.

70 That although these individuals continued to live in Charlotte, North Carolina, that they did not live in any property or houses belonging to the Company's Charlotte plant but in houses and homes of their own.

That they were unable to find residence or living accommodations in Rock Hill.

That a factual difference between the pay of the individuals named and other drawing-in hands at the Company's Rock Hill plant is that these individuals draw more pay than the other drawing-in hands at the Rock Hill plant. That there are only—that there were, at the times referred to above, and still are, only two to four other drawing-in hands, in addition to the individuals named.

That the individuals named also are paid at their regular rate of pay for the time elapsing while they are enroute to and from Charlotte.

That one of the individuals named; namely, Mrs. Virginia Moore; furnishes an automobile in which some of the individuals named ride to and from Charlotte regularly and that the Company reimburses Mrs. Moore for her mileage upon the use of her car at the rate of six cents per mile.

That the greater pay above referred to received by the persons named and paid by the Company to them was the only basis upon which the Company was able to hire such persons to work in its Rock Hill plant, they being unwilling to work in the Rock Hill plant upon any lower terms and the Company being unable to obtain

any other drawing-in hands to do equivalent work on any terms better to the Company.

That the persons named, being experienced and skilled in drawing in work on fancy and striped goods, are the only drawing-in hands in the Company's Rock Hill plant who are so skilled and experienced and the only drawing-in hands who can handle such work, and that they are essential and indispensable employees to the Rock Hill plant in that sense and for that reason.

That the individuals named from the dates above referred to on which they commenced to work at the Company's Rock Hill plant have at all times and ever since worked as such employees at the Company's Rock Hill plant regularly and without interruption except for such as may have been occasioned briefly by illness, or the like; except that one of the above-named, Mrs. Myrtie Corley quit the Company's employment on August 2, 1946, and has never worked for the Company since, and Mrs. Louise Bayles quit
71 the Company's employment on September 15, 1946 and has never worked for the Company since.

. . . . . .

That the aforenamed Myrtie Corley, upon quitting her work at the Rock Hill plant, immediately reapplied for employment as a drawing-in hand at the Charlotte plant and was refused employment there for the reason that drawing-in hands were—no additional drawing-in hands were needed at that plant.

That likewise Mrs. Louise Bayles, after quitting her employment at the Rock Hill plant, applied for employment as a drawing-in hand at the Charlotte plant and was refused such employment for the same reason.

That the persons named in all respects share in the activities, social and otherwise, with the other employees of the Rock Hill plant. That they contribute to various mutual and common employee funds, along with other Rock Hill employees.

That other Rock Hill employees, on occasion, engage in social activities with the individuals named in the homes of the said individuals in Charlotte, and that the circumstances with respect to such mutual interests, as between the individuals named and the other Rock Hill employees are no different from similar relationships between Rock Hill employees not involving—

. . . . . .

Mr. BLAKENEY: That the persons named have participated in all wage increases that other Rock Hill employees have participated in since the dates that they commenced to work at Rock Hill.

That all letters and communications and notices which have gone from the Company to any other employees of the Rock Hill plant; general notices, communications; have likewise gone to these

individuals. That one such example was a letter written by the Company prior to the election referred to in this proceeding held on May 1, 1946, in which the Company, among other things, urged all employees to vote in said election. That the individuals named received such letter, along with all other employees of the Rock Hill plant.

. . . .

Mr. RAINS: I do not wish to be misunderstood as agreeing that the offer of proof as such would be accepted as proof upon any review and that in the event of any review and a possible over-
72 ruling of your decision that the offer of proof would automatically be accepted as the truth of the situation.

TRIAL EXAMINER MARX: Well, now, I think that it is pretty plain that an offer of proof is not proof.

. . . .

(The documents heretofore marked General Counsel's Exhibits Nos. 10 and 15, for identification were received in evidence.)

. . . .

(The document heretofore marked General Counsel's Exhibit No. 24 for identification was received in evidence.)

. . . .

TRIAL EXAMINER MARX: . . . I am interested in learning, incidentally, for your information, wholly aside from the Regional Director's determination there has been proof that the Union represents the unit in the plant—there is no question that there has been no bargaining. There has been refusal to bargain unless I misunderstood the testimony. I don't believe I did.

Mr. BLAKENEY: No, sir.

. . . .

GENERAL COUNSEL'S EXHIBIT 2

United States of America
National Labor Relations Board

Case No. 10-R-1803 Docketed 3-28-46.

PETITION FOR CERTIFICATION OF REPRESENTATIVES

The undersigned Petitioner hereby alleges that the Employer named below has refused to recognize Petitioner as the exclusive collective bargaining agent of all the employees in the bargaining unit hereinafter described and that such refusal has given rise to a question concerning representation affecting commerce within the meaning of the National Labor Relations Act. Pursuant, therefore, to Section 9(c) of said Act, Petitioner requests the National Labor

Relations Board to investigate such controversy and certify to the parties the name or names of the representatives designated or selected by the employees.

73 1. Name of employer: HIGHLAND PARK MANUFACTURING COMPANY, PLANT No. 2, ROCK HILL, SOUTH CAROLINA.

2. Address of establishment: 300 East 16th St., Charlotte, N. C.

3. Industry: MFRS. COTTON TEXTILES, PRINTS.

4. Petitioner: TEXTILE WORKERS UNION OF AMERICA, CIO.

5. The alleged appropriate bargaining unit INCLUDES ALL PRODUCTION AND MAINTENANCE WORKERS EXCEPT FOR SUPERVISORS, FOREMEN AND OFFICE CLERICAL WORKERS.

6. The Unit contains approximately 350 employees, of which number more than 51% have designated or selected petitioner as their bargaining representative.

7. The following individuals or labor organizations claim to represent employees in the Unit: TEXTILE WORKERS UNION OF AMERICA, CIO, 1011 Independence Building, Charlotte, N. C.

By: R. R. LAWRENCE,
Regional Director.

TWUA-CIO, 1011 Independence Bldg.,
Charlotte, N. C. Telephone 3-0731
Contact Field Representative,
JAMES H. FULLERTON,

TWUA-CIO, 1011 Independence Bldg.

Subscribed and sworn to before me this 26th day of March, 1946, at Charlotte, N. C.

JAMES FULLERTON,
My Commission expires Aug. 22nd, 1947.

GENERAL COUNSEL'S EXHIBIT 3

United States of America
National Labor Relations Board

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY
Case No. 10-R-1803

AGREEMENT FOR CONSENT ELECTION

The undersigned Employer (herein called Employer) and the undersigned labor organization, subject to the approval of the Regional Director for the National Labor Relations Board (herein

called the Regional Director and the Board respectively), HEREBY AGREE AS FOLLOWS:

74 1. SECRET BALLOT—An election by secret ballot shall be conducted under the supervision of the Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by the undersigned labor organization. Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board; provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election.

Time and place of election: May 1, 1946. Place—Old Slasher Room in Company's plant in Rock Hill. Time—

Entire third shift: 6:00 A. M. to 7:00 A. M.;

First shift: Top floor, 8:00 A. M. to 9:00 A. M.; Main floor, 9:00 A. M. to 10:00 A. M.; Basement, shop and outside, 10:00 A. M. to 11:00 A. M.;

Second shift: Top floor, 3:30 P. M. to 4:30 P. M.; Main floor, 4:30 P. M. to 5:30 P. M.; Basement, shop and outside, 5:30 P. M. to 6:00 P. M.,—all on May 1, 1946.

2. THE UNIT

All the Company's production and maintenance employees at its Rock Hill, South Carolina, plant, exclusive of clerical employees, superintendents, overseers, second-hands, and all other supervisory employees having authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action.

(herein called the Unit) constitute a unit appropriate for the purposes of collective bargaining.

3. ELIGIBLE VOTERS—The eligible voters shall be those employees included within the Unit, *who appear on the Employer's pay roll for the period* indicated below, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list
75 of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

Pay-roll period for eligibility—April 12, 1946.

4. NAMES ON BALLOT—In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

First: YES.
Second: NO.
Third:
Fourth:

5. NOTICES OF ELECTION—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

6. OBSERVERS—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the non-supervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to an observer designated by each party for such purpose.

7. OBJECTIONS, CHALLENGES, REPORTS THEREON—Objections to the conduct of the ballot, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties. The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained the Regional Director may in his report include an order voiding the results of the election and in that event, shall be empowered to conduct a new election under the terms and provisions of this
76 agreement at a date, time, and place to be determined by him.

If challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon.

8. CONSENT DETERMINATION OF REPRESENTATIVES—The Regional Director shall, and when appropriate, issue a Consent Determination of Representatives to the parties, setting forth name of the labor organization which has been designated and selected as the exclusive representative of all the employees in the Unit for the

purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

9. RUN-OFF PROCEDURE—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall conduct a run-off election at a time and place to be determined by him. Said run-off election shall be in accordance with Article III, Section 11 (b) and (c) of the Board's rules and Regulations.

HIGHLAND PARK MANUFACTURING COMPANY,
Employer,

By (S.) T. W. CHURCH, JR., Treas.

TEXTILE WORKERS UNION OF AMERICA, CIO,
Petitioner,

By (S.) J. H. FULLERTON, *Dist. Rept.*
Textile Workers Union of America, C.I.O.

Recommended:

(S.) A. C. JOY,
Field Examiner, National Labor Relations Board.

Date executed, April 10, 1946.

Date Approved, April 10, 1946.

(S.) PAUL L. STYLES,
Regional Director, National Labor Relations Board.

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77 GENERAL COUNSEL'S EXHIBIT 7

United States of America

Before the National Labor Relations Board, Tenth Region

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

Case No. 10-R-1803

CONSOLIDATED REPORTED ON CHALLENGED BALLOTS AND OBJECTIONS CONSENT DETERMINATION OF REPRESENTATIVES

The Challenged Ballots

In the election conducted on May 1, 1946, by an agent of the undersigned, pursuant to an Agreement for Consent Election, the Taliy of Ballots revealed the following results:

Valid votes cast for Textile Workers Union of America [1] 197

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[1] Hereafter called the Union.

Valid votes cast against the Union	194
Challenged ballots[2]	11

The challenge and ballots were thus sufficient in number to affect the results of the election.

The undersigned has caused an investigation to be made of the challenged ballots and hereby finds as follows:

Louise Jackson. Jackson was challenged by the Field Examiner when she appeared at the polls to vote but her name was not found on the list of eligible voters. The Company's records revealed that Jackson worked in all weeks during 1946 until the week of April 6th. She did not work during the weeks of April 6th and 13th, but returned to work during the week of April 27th and was still employed on the day of the election. There is no record to indicate, and no claim made by anyone, that Jackson had quit or otherwise terminated her employment. Jackson retained her status as an employee during the week of April 13th and therefore was entitled to cast a ballot.

78

James Pressley. Pressley was challenged by the Field Examiner when he appeared at the polls to vote but his name was not on the list of eligible voters. Pressley was separated from the Company's employ on March 7, 1946; records dated that day showing that he had voluntarily quit and drawn his pay through a special payment on that date, rather than being paid along with the other employees. Pressley was rehired during the week of April 20, 1946. Not having retained his employment status through the week of April 13, 1946, Pressley was not an eligible voter and was not entitled to cast a ballot.

Gertrude Boyd, Myrtie Corlie (or Corley), Phronie Fisher, Mildred Floyd, Virginia Moore, Pauline Rice and Josephine Wilson. These employees were all challenged by the union on the alleged grounds that they are on loan from the Company's plant at Charlotte, North Carolina and, therefore, are not regular employees of the Rock Hill plant that is involved in these proceedings.

All of these employees are draw-in hands. At its Rock Hill plant, the Company employs twelve draw-in hands; four being resi-

[2] Nine of the challenged ballots involved questions as to the eligibility of certain persons to cast ballots. Two involved a challenge of the correctness of the Field Examiner's rulings as to the meaning of the markings on the ballots. It would perhaps have been better had the Tally of Ballots reflected the Field Examiner's rulings, leaving any disagreement with such ruling to be treated as objections to the election. However, under the circumstances, the ballots will be treated as challenged ballots.

dents of Rock Hill and eight (the seven challenged voters and one other [3]) all of whom reside at Charlotte, N. C.

The Company is at present engaged in converting its production at Rock Hill from plain to striped cloth. In connection with this, the services of a number of draw-in hands are required. This work began about the middle of March 1946. Boyd, Moore, Rice and Wilson began working at Rock Hill during the week of March 30, 1946. Corley and Floyd began the following week and Fisher began the week following that. Thus, all seven were working at the Rock Hill plant during the week of April 13th.

It has been the practice for many years for the Company to send draw-in hands from its Charlotte plant to Rock Hill to assist with the draw-in work that is necessary at the latter plant. Several of the employees involved here had been assigned to Rock Hill from time to time for several years. It was customary for the
79 Rock Hill management to ask for these workers by name whenever draw-in assistance was needed.

The Company contends that the employees have always severed their employment relationship with the Charlotte plant when they have worked at Rock Hill, and that they are bona fide employees of the Rock Hill plant. Although workers assigned from Charlotte to Rock Hill have terminated their group insurance at the Charlotte plant, they have always returned to employment at the Charlotte plant upon completion of the assigned tasks at Rock Hill. No formal application for reemployment has been required; merely a notification to their supervisor that they were finished at Rock Hill. Such assignments have varied from a few weeks to a few months. At the time the employees would be assigned at Rock Hill, the length of stay was indeterminate. The same conditions prevailed when the employees involved here were sent to Rock Hill to begin the current assignment there.

All of the affected employees commute daily from their homes to Rock Hill (a distance of about 28 miles each direction), traveling in automobiles driven by two of the group. The company reimburses these drivers for mileage at the rate of 6¢ per mile. All members of the group are paid for two hours per day for traveling time. Although the normal work hours of the first shift of the plant are from 7 a.m. to 3 p.m. the employees here involved work a special shift of 8 a.m. to 4 p.m. The Company has no comparable arrangements with any other employees.

Although the affected employees are paid on an hourly basis when they work in Rock Hill, as contrasted with a piece-work basis when working in Charlotte, the hourly rate is derived from

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[3] One employee was not challenged when she informed the union observer that she had quit her employment at Charlotte.

their earnings at Charlotte, rather than being based on the hourly rate paid to Rock Hill residents who perform draw-in work. Thus, their rate of pay is based on the Charlotte plant wage structure, rather than that of the Rock Hill plant. Even the manner of payment of these employees differs from that of other employees. The latter are paid by a paymaster, during working hours in the mill. The group here under consideration receive their pay directly from the plant office. They have never taken out group life insurance there.

The Company contends that the two factors warrant these employees being considered as regular Rock Hill employees and, therefore, eligible to vote; namely, that the number of drawn-in hands at Charlotte is being reduced and that because Rock Hill is now producing striped goods, the normal tie-in process cannot be used and it will be necessary to continue draw-in work. The employees here involved include some of the most skilled of the draw-in hands and some with many years of seniority. Contrary to the implications made by the Company[4] they were still employed at Charlotte when sent to Rock Hill, and the arrangements made with the employees at that time were exactly the same as at all times in the past including the temporary payment of mileage and preferential hours of employment.

Although the length of the persent period of employment is problematical, all factors indicate that it is of temporary nature only. Therefore, because of this and other factors discussed above, the employees involved do not have a sufficient community interest with the other employees at the Rock Hill plant for them to have a voice in the selection of a collective bargaining representative for those other employees. Consequently, they were not entitled to cast ballots in the election of May 1.[5]

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[4] The Company implied that these workers had been laid off at Charlotte and stated that they had applied for employment at Rock Hill. On the contrary, they were requested by Rock Hill; the first four in accordance with long-standing arrangements and the others upon recommendation of this group when it was found that additional draw-in hands were required.

[5] The Company contends that the Agreement for Consent Election provided that the eligible voters shall be those included within the unit who appear on the payroll for the specified period and, therefore, that the employees here under discussion should be eligible to vote. However, the Agreement also provides that the election would be held in accordance with the Board's customary practices and procedures. The Board has frequently held that such temporary employees are not eligible to cast ballots in elections for the choice of a collective bargaining representative. *Rock Island Produce Company*, 48 NLRB 930; *Sierra-Pacific Power*, 56 NLRB 458.

The Company urged before the Field Examiner that the union's failure to raise an issue concerning these employees, prior to the election, at the time the list of eligible voters was checked should have a bearing on the decision as to eligibility. The check of the roster prior to the election is merely an administrative procedure that is used to try to eliminate as many problems as possible
81 in advance of the actual election. Failure to raise an issue at such time does not preclude any party from challenging at the polls.

The Company has requested that a hearing be held before a Trial Examiner if the undersigned should conclude that the employees here under discussion should not be eligible to vote. This is, in effect, a request that the provisions of Section 1 of the Agreement for Consent Election should be set aside with respect to the provisions that the determination of the Regional Director shall be final and binding upon any question, including questions as to eligibility of voters. No valid reason appears to have been presented and the request is herewith denied.

The Questioned Ballots

The Field Examiner concluded that the intent of one voter (unknown) was to vote "No". Because of certain markings in the "Yes" box, in addition to the clear-cut "X" in the "No" box, the union challenged the ruling; contending that the ballot should be "Void". Although the intent of the voter may have appeared clear, where there is a marking on both sides of the ballot, the intent of the voter is not definite. If he changed his mind after marking in one of the boxes, he should have returned the ballot and obtained a new one rather than endeavoring to obliterate his first marking. The ballot carries such instructions in clear-cut language. We shall, therefore, apply the more basic principle that a ballot marked in both boxes is "Void".

The second ballot in this category also involves a dual marking. The Field Examiner's ruling that the ballot should be "Void" is hereby sustained.

Disposition of Challenged Ballots

Of the eleven challenged ballots, two have been found to be void; eight of the voters have been ruled to have been ineligible; and one (Jackson) has been ruled to be eligible to have her vote counted. Inasmuch as Jackson's ballot cannot change the results of the election, the undersigned will not direct that her ballot be opened and counted. The revised Tally of Ballots thus becomes:

Valid votes for the Union	197
Valid votes against the Union	194
Unopened challenged ballots	11

The Objections

On May 8, 1946, the union filed with the undersigned a letter, dated May 7, 1946, protesting against certain alleged acts
82 of the Company and requesting that the allegations be investigated and the election set aside if, after resolution of the challenged ballots, the union failed to receive a majority of the valid votes cast. This letter was considered as constituting Objections to Conduct Affecting the Results of the Election. The Objections were timely and a copy was served by the union on the Company.

By their terms, the Objections were applicable only if the union failed to receive a majority of the valid votes cast. That condition was not met and, therefore, the Objections are herewith dismissed.

CONSENT DETERMINATION OF REPRESENTATIVES

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot. Objections were filed to Conduct Affecting the Results of the Election and have been duly ruled upon hereinabove.

A majority of the valid votes have been cast for Textile Workers Union of America (CIO). Pursuant to Section 8 of the Agreement for Consent Election the undersigned hereby finds and determines that

TEXTILE WORKERS UNION OF AMERICA (CIO)

is the exclusive representative of all the employees in the unit defined in Section 2 of the Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Atlanta, Georgia, this 29th day of May, 1946.

PAUL S. SAYLER,
Regional Director, National Labor Relations Board, Tenth Region.

August 28, 1946.

Mr. T. W. Church, Manager,
Highland Park Manufacturing Co.,
200 East 16th St.,
Charlotte, N. C.

Dear Sir:

On June 1st, 1946, the National Labor Relations Board, Tenth Region, handed down its decision, certifying Textile Workers Union of America, CIO, as per the election held May 1st, 1946, at the Highland Park Manufacturing Company Plant No. 2, in Rock Hill, South Carolina, as the collective bargaining agent for all its maintenance and production workers, with certain exceptions.

On July 16th, 1946, our representative, Mr. Julius Fry, wrote you requesting that you meet with our representatives and committee, for the purpose of collective bargaining, to the end that a contract and agreement on working conditions and wages, be worked out and signed by both parties thereto.

Nearly four months have elapsed since the election, and to date, your Company has declined to meet with us for the purpose of complying with the board's certification and our request.

We request to be advised not later than September 3rd, 1946, what the Company intends to do in this matter.

Respectfully yours,

JAMES H. FULLERTON,
TWUA Representative.

JHF:dew
CC: Whiteford Blakeney
Ben Dawkins

R. H. Johnston, President — H. W. Moore, Vice-President
T. W. Church, Jr., Sec. & Treas.

Highland Park Manufacturing Co.
Manufacturers of Cotton and Rayon Goods
Charlotte 1, N. C.

Sept. 3rd, 1946.

Textile Workers Union of America,
Independence Bldg.,
Charlotte, N. C.

Gentlemen:

Attention: Mr. Fullerton

We have received your letter of August 28th.

We still feel that we are entitled to a hearing upon the rulings made by the National Labor Relations Board's Regional Director. It seems to us that this should be agreeable to you and that you should join with us in obtaining such hearing.

Very truly yours,

HIGHLAND PARK MFG. CO.
By T. W. CHURCH, JR.

TWC/BC

GENERAL COUNSEL'S EXHIBIT 10

Sept. 23, 1946.

Mr. T. W. Church, General Manager,
Highland Park Manufacturing Co.,
Charlotte, N. C.

Dear Mr. Church:

This will confirm our telephone conversation of September 12, at which time I stated to you that although the Union was not agreeing with the Company's position, that it was not the certified bargaining agent as a result of the election conducted by the Board, that we had received new designations from all of the employees of the Company, and we would agree that an agent of the National Labor Relations Board or any Certified Public Accountant could make a check of our authorization cards with a Company payroll, if the Company would agree, that if our Union represented an uncontestable majority of the employees that the Company would agree

to recognize the Union as the bargaining agent and enter into
85 a collective bargaining contract in good faith. During this conversation, you informed me that the officials had met and discussed the matter, but were not changing its position, that it claimed it was entitled to a hearing on the results of the election conducted by the Board. You will recall that I further informed you that the Union was, and still is, ready at all times to bargain with you.

As you undoubtedly know, the employees held a meeting on September 15th, at which time they voted to strike on September 16, 1946, because the Company has refused to acknowledge our Union as the bargaining agent, because the Company has refused to abide by the terms of the consent election agreement entered into by the Company and the Union on April 10, 1946, and because the Company has continued to violate the National Labor Relations Act.

Very truly yours,

JF:dew JAMES FULLERTON.

GENERAL COUNSEL'S EXHIBIT 11

June 25, 1946.

Highland Park Manufacturing Co.,
Rock Hill, South Carolina.

Attention: Mr. T. W. Church

Dear Sir:

Since Textile Workers Union of America, CIO, has been certified as the sole and exclusive collective bargaining agent for the employees of your Number 2 plant, in Rock Hill, South Carolina, the Union is herewith submitting its proposal for a collective bargaining contract to cover the rates of pay, wages, hours of employment, and working conditions of the employees. Please advise at what time the writer can meet with representatives of your company to discuss this matter.

Very truly yours,

JULIUS R. FRY,
TWUA Representative.

JRF:DEW
Enclosure

86 GENERAL COUNSEL'S EXHIBIT 12

R. H. Johnston, President H. W. Moore, Vice-President
T. W. Church, Jr., Sec. & Treas.

Highland Park Manufacturing Co.
Manufacturers of Cotton and Rayon Goods
Charlotte 1, N. C.

June 28, 1946.

Textile Workers Union of America,
Independence Building,
Charlotte, N. C.

Attention Mr. Fry

Gentlemen:

We have received your letter of June 25th.

In view of the Exceptions which we have filed to the Report of the National Labor Relations Board's Regional Director relating to the election held at our plant at Rock Hill on May 1st, it is our understanding that this matter is not now at a point where it is necessary for us either to accede or to refuse to accede to your request that we engage in collective bargaining with you for a contract affecting the employees of our Rock Hill Plant.

Very truly yours,

HIGHLAND PARK MFG. COMPANY,
By T. W. CHURCH, JR.,
Secretary and Treasurer.

twc/g

GENERAL COUNSEL'S EXHIBIT 13

(Copy) July 3, 1946.

Highland Park Mfg. Co.,
200 East 16th St.,
Charlotte 1, N. C.

Attention: Mr. T. W. Church, Jr.

Dear Mr. Church:

We are in receipt of a copy of letter to Mr. W. S. Blakeney, dated June 28, 1946, from John P. Chapman, Associate Director of the Field Division of the National Labor Relations Board, denying request for an opportunity to present oral argument in a formal hearing before the Board on the Regional Director's ruling in the representation case, in your No. 2 plant.

87 In view of the letter's content, we are again requesting an early conference with you to negotiate a collective bar-

gaining agreement for the employees of your No. 2 Plant in Rock Hill.

Very truly yours,

JULIUS R. FRY,
TWUA Representative.

GENERAL COUNSEL'S EXHIBIT 14

R. H. Johnston, Pres.
Charlotte, N. C.

H. W. Moore, Vice-Pres.
Charlotte, N. C.

T. W. Church, Jr., Sec. & Treas.
Charlotte, N. C.

Highland Park Manufacturing Company
Manufacturers of Cotton Goods
Rock Hill, S. C.

Mill No. 1, Charlotte, N. C. Mill No. 2, Rock Hill, S. C.
Mill No. 3, Charlotte, N. C.

July 5, 1946.

Textile Workers Union of America,
Independence Building,
Charlotte, North Carolina.

ATTENTION: MR. FRY

Gentlemen:

We have received your letter of July 3rd.

We have requested our attorneys to write to Mr. John P. Chapman, Associate Director of Field Division, National Labor Relations Board, in further reference to his letter which you mention. Our attorneys inform us today that they have written to Mr. Chapman, but that as yet there has hardly been time for him to reply.

What we are trying to do is to get a hearing so that we may have opportunity to present evidence and facts bearing upon the matters which the Board's Regional Director has ruled on.

Very truly yours,

HIGHLAND PARK MANUFACTURING COMPANY,
By T. W. CHURCH, JR.

88 GENERAL COUNSEL'S EXHIBIT 16

July 16, 1946.

Highland Park Mfg. Company
Charlotte, North Carolina
ATTENTION: MR. CHURCH

Dear Mr. Church:

We have today received a copy of a letter to your attorney, Mr. Whiteford Blakeney, from Mr. Oscar Smith, from the National Labor Relations Board, dated July 3, 1946, again denying your request for an oral hearing of the questions you raised relative to the recent election at your number 2 plant in Rock Hill, South Carolina.

In view of the contents of this letter, we again renew our request for a conference with you at an early date to discuss matters pertaining to wages, hours, and conditions of employment for the employees of your Number 2 plant.

Very truly yours,

TEXTILE WORKERS UNION OF AMERICA, CIO,
By JULIUS R. FRY,
TWUA Representative.

JRF:dew

GENERAL COUNSEL'S EXHIBIT 17

R. H. Johnston, President H. W. Moore, Vice-President
T. W. Church, Jr., Sec. & Treas.

Highland Park Manufacturing Co.
Manufacturers of Cotton and Rayon Fabrics
Charlotte 1, N. C.

July 22, 1946

Textile Workers Union of America,
Independence Building,
Charlotte, N. C.

ATTENTION: MR. FRY

Gentlemen:

We have received your letter of July 16th.

We do not consider that the ruling which the National Labor Relations Board's Regional Director has made is in any way fair or just, and it is our intention to continue to press for a hearing on the matter.

Very truly yours,

HIGHLAND PARK MFG. COMPANY,
T. W. CHURCH, JR., *Treasurer.*

twc/g

GENERAL COUNSEL'S EXHIBIT 19

(Sample Union Card)

Sept. 9

No. 258

I Rachel Carter, now employed by

HIGHLAND PARK MFG. CO., CHARLOTTE, N. C.

has voluntarily accepted membership in the TEXTILE WORKERS UNION OF AMERICA (CIO), and designate said union as my bargaining agency in all matters pertaining to wages, hours and other conditions of employment. I faithfully pledge myself to conform with and abide by the Constitution, By-Laws and all rules and regulations of said union and of the Local thereof of which I am a member. I hereby authorize my employer (the above-named company) to deduct from my wages each week my union dues and to pay same to the Financial Secretary of my Local Union; provided, however, that no deduction shall be charged against me for any week in which I do not perform work; provided further, that any terms or conditions agreed upon regarding deduction of dues in contract between the TEXTILE WORKERS UNION OF AMERICA and the above-named company, prior to or subsequent to the signing of this authorization, is hereby agreed to.

Weaving 3rd	Rachael Carter
Department	Signature
Glenn C. Webb	273 Kimbell St.
Witness	Address

Fee Charged_____ Sex____F____ S. S. No. _____

GENERAL COUNSEL'S EXHIBIT 24

June 28, 1946.

Mr. W. S. Blakeney
Guthrie, Pierce & Blakeney
Johnston Building
Charlotte 2, N. C.

Re: Highland Park Mfg. Co.
Case No. 10-R-1803

DEAR MR. BLAKENEY:

This will aeknowledge your letter of June 5th with enclosed Exceptions to Consolidated Report of Regional Director.

Inasmuch as the Agreement for Consent Election of April 10, 1946, under which the election in this matter was conducted, provides that "Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board, provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility
90 of voters, raised by any party hereto relating in any manner to the election" your request to have the ruling of the Regional Director overruled and reversed, and your request for an opportunity to present your argument at a formal hearing, are hereby denied.

Very truly yours,

JOHN P. CHAPMAN,
Associate Director of Field Divison.

CC: Textile Workers Union of America, CIO Independence Building, Charlotte, North Carolina.
Paul L. Styles, Regional Director, 10th Region.

EXCERPTS OF GENERAL COUNSEL'S EXHIBIT 1-B
(COMPLAINT)

I

The respondent Highland Park Manufacturing Company is and has been for many years a corporation organized under and existing by virtue of the laws of the State of North Carolina, with its principal office at Charlotte, North Carolina.

II

At all times material herein, the respondent has maintained a plant and place of business in or near Rock Hill, South Carolina,

herein called the Rock Hill plant, and is now and has been continuously engaged at its Rock Hill plant in the manufacture and sale of broad cloth, shirting and knitted yarn.

III

. The respondent in the course and conduct of its business operations at its Rock Hill plant during the calendar year of 1946 (which year is representative of all times material herein) purchased raw materials consisting principally of cotton valued in excess of $100,000.00, approximately 90% of which was purchased outside the State of South Carolina and shipped in interstate commerce to respondent's said plant at Rock Hill, South Carolina. During the same period, the respondent manufactured and sold textile products valued in excess of $100,000.00, approximately 90% of which was shipped in interstate commerce from its said plant at Rock Hill, South Carolina, to places outside the State of South Carolina.

91 EXCERPTS OF GENERAL COUNSEL'S EXHIBIT 1-K (ANSWER)

1. The allegations of Paragraph I are admitted.
2. The allegations of Paragraph II are admitted.
3. The allegations of Paragraph III are admitted.

GENERAL COUNSEL'S EXHIBIT 21

Rock Hill, S. C.

Mr. R. H. Johnston
Highland Park Manufacturing Co.
Charlotte 1, N. C.

DEAR MR. JOHNSTON:

We, the undersigned, are all employees of the Highland Park Company in Rock Hill. We are members of the Textile Workers Union of America (CIO). We are on strike because the Company will not bargain with the Union.

We hereby state that we wish the Union to represent us in collective bargaining about wages, hours of work, and other conditions of employment, and we urge that the Company recognize its duty to bargain; a legal duty under the laws of our Nation, and a moral duty as expressed by every leading Church denomination in the South.

. . . This is to certify that each of the above persons, known personally to me or identified to me, today personally signed in my

presence; that each read it, or had it read and explained, before signing; and that each affirmed the thoughts contained therein.
Date: March 20, 1947.

JAMES H. COLLINS,
Notary Public for S. C.

My Commission expires at the pleasure of the Governor.

State of S. C.
County of York.

This is to certify that I, James H. Collins, a Notary Public for and in the State of South Carolina, have examined each of the Signers of the attached Affidavits separately, and each, of his own or her own free will and accord did sign each of them in my presence. Some were illiterate and could not write. These were signed by me and each of them made his or her X. These are all designated by my initials JHC to the left and right of the Signature. These
92 Affidavits were made beginning on the 20th day of March 1947, and completed on the 24th day of March 1947.

Given under my Hand and Seal this 24th day of March 1947.

JAMES H. COLLINS,
Notary Public for S. C.

My Commission expires at the pleasure of the Governor.

EXCERPTS FROM RESPONDENT'S EXHIBIT 1

EXCEPTIONS TO CONSOLIDATED REPORT OF REGIONAL DIRECTOR

The Company respectfully submits that there is no genuine question as to whether the seven persons above named were "employees at the Company's Rock Hill plant" and that the Regional Director's ruling or "finding" that these persons were not "employees at the Company's Rock Hill plant" is not a bona fide exercise of discretion. In support of this position, the Company hereby asserts that there is no single fact or circumstance which tends to establish these persons as employees anywhere other than at this Company's Rock Hill plant. The Company further asserts that various "findings" set forth in the Regional Director's Report as basis for his conclusion are not in truth findings of fact, but are mere ex parte declarations, made without inquiry of the Company upon such matters and without opportunity on the part of the Company to furnish the true facts in regard to such matters; that on the morning after the holding of the election, the Board's Field Examiner did ask certain questions of the Company which representatives of

the Company answered, but the Company did not understand that it then had an opportunity, and now alleges that it did not then have an opportunity, to present the facts, circumstances, and evidence establishing that the seven persons named above were "employees of the Company's Rock Hill plant"; that immediately after the holding of the election, the Company, through its attorneys, wrote to the Board's Regional Director requesting in the event the Regional Director should consider excluding the ballots of these seven persons from the election count, "that a formal hearing be held before a Trial Examiner so that complete and detailed evidence may be presented in regard to the matter"; that such hearing has never been held, nor indeed did the Company receive any
93-94 reply to its request for such hearing; that the Company has thus had no opportunity to present the evidence tending to establish that the seven persons named above were employees in the Company's Rock Hill plant; and that the Board's Regional Director has ruled that these persons were not employees at the Company's Rock Hill plant without hearing, and without any representative of the Board hearing, the evidence with respect thereto.

WHEREFORE, the Company prays that the Regional Director's Report, in its ruling that the persons named above were not eligible to vote in the election above referred to, be over-ruled and reversed, and that in any event, the Company be given opportunity at a formal hearing to present facts and evidence establishing that such persons were eligible to vote in such election.

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95 **Appendix to Respondent's Brief**

RESPONDENT'S EXHIBIT 1

United States of America

Before the National Labor Relations Board

Case No. 10-R-1803

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

EXCEPTIONS TO CONSOLIDATED REPORT OF REGIONAL DIRECTOR

Upon the grounds hereinafter set forth, Highland Park Manufacturing Company respectfully excepts to the Consolidated Report which has been rendered herein by the Board's Regional Director.

On May 1, 1946, the Board conducted an election among the production and maintenance employees of the Company at the Company's plant in Rock Hill, South Carolina, for the purpose of determining whether a majority of such employees desired to be represented by the Union above named, Textile Workers Union of America, CIO. In an agreement for the holding of such election by consent, such agreement having been entered into by and between the Company and the Union and approved by the Board's Regional Director, it was provided that "the eligible voters shall be those employees included within the unit, *who appear on* the employer's pay roll for the period indicated below"—the period "indicated below" being April 12, 1946. Likewise, in the Board's official
96 "notice of election" posted in the Company's plant, it was stated that "those eligible to vote are all production and maintenance employees at the Company's Rock Hill, South Carolina, plant *who appear on* the Company's pay roll for the period ending April 12, 1946."

Among those who presented themselves at the voting place on the election day and requested the opportunity of voting were seven persons who are engaged in production work "at the Company's Rock Hill, South Carolina, plant" and who do "appear on the Company's pay roll for the period ending April 12, 1946." The names of these persons are Gertrude Boyd, Myrtie Corley, Phronie Fisher, Mildred Floyd, Virginia Moore, Pauline Rice and Josephine Wilson.

The Union challenged the right of these persons to vote in the election. Thereupon, the Board's Field Examiner who conducted the election placed the unopened ballots of these persons in seven separate sealed envelopes, marking on the outside of each such envelope the name of the person who cast the ballot enclosed within that envelope.

Thereafter, on or about May 14, 1946, the Board's Field Examiner wrote to the Union, forwarding a copy of his letter to the Company, and stating that he had submitted a Report recommending to the Board's Regional Director that "the challenged ballots be determined," from which the Company understood, and still understands, that the Board's Field Examiner was recommending to the Board's Regional Director that these ballots be opened and counted. The Board's Regional Director has now, however, in his "Consolidated Report," ruled that the seven persons named above were not eligible to vote in the election and that their ballots shall not
97 be opened and counted. To this ruling, the Company respectfully objects and excepts.

Apparently the basis of the Regional Director's ruling is that the seven persons in question were not "employees" at the Company's Rock Hill plant, for it is certainly not to be denied that they

do "appear on the Company's pay roll for the period ending April 12, 1946."

The Company respectfully submits that there is no genuine question as to whether the seven persons above named were "employees at the Company's Rock Hill plant" and that the Regional Director's ruling or "finding" that these persons were not "employees at the Company's Rock Hill plant" is not a bona fide exercise of discretion. In support of this position, the Company hereby asserts that there is no single fact or circumstance which tends to establish these persons as employees anywhere other than at this Company's Rock Hill plant. The Company further asserts that various "findings" set forth in the Regional Director's Report as basis for his conclusion are not in truth findings of fact, but are mere ex parte declarations, made without inquiry of the Company upon such matters and without opportunity on the part of the Company to furnish the true facts in regard to such matters; that on the morning after the holding of the election, the Board's Field Examiner did ask certain questions of the Company which representatives of the Company answered, but the Company did not understand that it then had an opportunity, and now alleges that it did not then have an opportunity, to present the facts, circumstances, and evidence establishing that the seven persons named above were "employees of the Company's Rock Hill plant"; that immediately after the holding of the election, the Company, through its attorneys, wrote to the Board's Regional Director requesting in the event the
98 Regional Director should consider excluding the ballots of these seven persons from the election count, "that a formal hearing be held before a Trial Examiner so that complete and detailed evidence may be presented in regard to the matter"; that such hearing has never been held, nor indeed did the Company receive any reply to its request for such hearing; that the Company has thus had no opportunity to present the evidence tending to establish that the seven persons named above were employees in the Company's Rock Hill plant; and that the Board's Regional Director has ruled that these persons were not employees at the Company's Rock Hill plant without hearing, and without any representative of the Board hearing, the evidence with respect thereto.

Specifically, and for example, the Regional Director declares in his Report that whenever the Company's Rock Hill plant needed draw-in hands, it was customary for the management of that plant to ask the management of the Charlotte plant, "for these workers by name." The Company denies that this is a fact and asks the opportunity of proving that it is not a fact.

The Regional Director declares that it is the contention of the Company that "employees have always (in the past) severed their employment relationship with the Charlotte plant when they have

worked at Rock Hill." The Company is making and has made no such contention.

The Regional Director declares that "the same conditions prevailed when the employees involved here were sent to Rock Hill" (as on previous occasions when employees came from Charlotte to Rock Hill). The Company denies that this is a fact and asks opportunity of proving that it is not a fact.

99 The Regional Director declares that "the Company has no comparable arrangements with any other employees" such as it has with the persons above named. The Company denies that this is a fact and asks the opportunity of proving that it is not a fact.

The Regional Director declares that "all factors indicate" that the employment of the persons named above at the Company's Rock Hill plant "is of temporary nature only." The Company denies that this is a fact and asks opportunity of proving that it is not a fact.

The Regional Director entirely fails to take into consideration or to mention in his Report various facts which establish clearly and beyond question that the persons named above were employees of the Company's Rock Hill plant—nor indeed could the Regional Director take such facts into consideration or mention them in his Report, inasmuch as they have never been presented to him or to any representative of the Board, nor, as pointed out above, has there been any opportunity afforded for the presenting of such facts.

WHEREFORE, the Company prays that the Regional Director's Report, in its ruling that the persons named above were not eligible to vote in the election above referred to, be over-ruled and reversed, and that in any event, the Company be given opportunity at a formal hearing to present facts and evidence establishing that such persons were eligible to vote in such election.

GUTHRIE, PIERCE & BLAKENEY,
Attorneys for Highland Park Manufacturing Company.

100 RESPONDENT'S EXHIBIT 2

July 1, 1946.

Mr. John P. Chapman,
Associate Director of Field Division,
National Labor Relations Board,
Washington, D. C.

Dear Sir:

In Re: Highland Park Manufacturing Company and Textile Workers Union of America, CIO, Case No. 10-R-1803

We have received your letter of June 28th.

It is, of course, true, as you point out, that the election in the above-entitled matter was conducted under an agreement which provided that "the determination of the Regional Director" should be final and binding upon any question relating to the election, including questions as to the eligibility of voters.

The Company's position, however, as set forth in its statement of Exceptions, is that there is in this case no genuine "question" as to the eligibility of the seven persons referred to in the Exceptions and no genuine "question" as to how the two ballots referred to in the Exceptions should be counted. It is further the Company's position that the Regional Director's ruling with respect to each of these matters is not a genuine "determination" nor a reasonable exercise of his discretion.

The Company points out in its Exceptions that the Regional Director has made his rulings without hearing the evidence and without knowing the facts which are material and pertinent to
101 these matters upon which he has ruled—and without affording the Company an opportunity to present such evidence and such facts to him.

In your letter you refer to the Company's request for opportunity to present argument. The Company is asking not an opportunity to present argument but an opportunity to present evidence and facts necessary to a bona fide decision upon the matters here involved—and such request the Company hereby respectfully and earnestly renews.

Very truly yours,

GUTHRIE, PIERCE & BLAKENEY,
By: W. S. Blakeney.

WB:D

102 TESTIMONY IN NATIONAL LABOR RELATIONS BOARD PROCEEDING

Case No. 10-C-2066

BOARD'S TRANSCRIPT OF RECORD

JAMES H. COLLINS:

By Mr. BLAKENEY:

Q. Are you connected with the Textile Workers Union of America, CIO?

A. Yes, sir.

Q. What is your connection with them?

A. I am a member of Local 10 of Rock Hill Printing & Finishing Company. Also a member on the auditing committee.

Q. Auditing committee?

A. Of that Union.

Q. How long have you been on that committee?

A. I believe this makes the third year.

Q. Then been on any other committees of the Union?

A. Welfare fund. I am on it, too. I am on it now. Have been for the last several months.

. . . .

A. Well, I have a list of the names of people that was on strike. I believe it was what was known as the commissary list.

103 Q. Who gave you that?

A. Mr. Whelchel and Miss Blane.

Q. And——

A. And that was the names that——

Q. And you were to go around and see everybody on that list?

A. They told me to try to see them if it was possible to do it.

Q. Did they have the addresses on there?

A. Some they did and some they didn't.

Q. Some of them you had to find out where they lived, of course?

A. Of course.

Q. Did you have to go as far as Mount Holly to find many?

A. There was just two over there. There was a lot of them around York County. I drove over 200 miles.

Q. You drove over 200 miles?

A. I drove over 200 miles from Thursday after the Commissary closed till Monday about noon. Mostly in circles. Some places I went as much as three or four times. I wanted the people to be sure they read the thing. If they didn't want to sign, it was perfectly all right. If they did it was up to them entirely.

Q. You wanted to be sure you gave them a chance, though?
104 A. Yes.
Q. Did you work pretty late at night?
A. No. I wasn't much of a night owl.
Q. Did you work any at night?
A. On Sunday I did when I went to Isaac Sims. It was dark enough—the reason it comes to my mind, it was dark enough he had lamp light. That is what he signed by.
Q. How did you decide when to quit? I mean how did you decide when to stop getting signatures?
A. I didn't get all of them. I had several I didn't get to see and on the Monday—on Monday I went back to the Union office and I told Miss Blane I had several that I hadn't seen. And she said, "Well, it seems to me you have done enough work and got enough of them anyway, so let's just let it ride."

NELL MCDONALD:

Q. Now, Mr. James Collins testified in substance that you signed that in his presence after he had read it or after you had read it in his presence; after he had read it to you or after you had read it yourself, in his presence. Is that true, or not?
A. That is not true.
Q. Did you know Mr. James Collins at that time?
A. No, I didn't even know him.
105 Q. Do you know him today?
A. Yes, I know him now.
Q. Can you say definitely whether you ever read any paper in his presence or he ever read any paper to you?
A. No, I never did read any paper in his presence and he never did read any paper to me.
Q. Has he even been to your house?
A. No.
Q. Have you even seen him at what is called the commissary of the Union——
A. I never did go to the commissary.

TRIAL EXAMINER MARX: Why don't you wait until the counsel finishes his question?

By Mr. Blakeney:

Q. I will repeat that. Did you ever see him at what is called the Union commissary?
A. No.
Q. How do you know you didn't?
A. Because I didn't never go to the commissary.
Q. Did Mr. Collins ever see you or speak to you on the street?
A. No.

Q. Or anywhere?
A. No.

106 Q. Will you state to the Examiner what were the circumstances under which you signed and why you signed? What led you to sign?
A. Well, there was one particular man right close to me——
Q. A little louder.
A. There was one particular man that run a job right close to mine, and every few minutes he would come up and call me names and he told me he was going to call me names until I signed.
Q. How long did that go on?
A. Well, I went to work sometime in May, I think, and I signed in August.

TRIAL EXAMINER MARX: What year, please? What year?
THE WITNESS: During 1946.

By Mr. Blakeney:

Q. But how long did this calling you names and this telling you what you just testified to, how long did that go on?
A. Well, just about the whole time that I was working until I signed.
Q. How frequently during the day?
A. Well, I would say at least four or five times during the day; during the eight hours.
Q. Why did you sign?
107 A. To make him hush so I could run my job in peace.
Q. Was there any other reason at all for your signing?
A. No.
Q. In your mind?
A. No.
Q. Is that the only reason you signed?
A. That is the only reason.

ARTHUR THOMAS:

Q. There has been introduced in evidence a list on which appears your name as having signed a Union card on August 3, 1946, witnessed by a Mr. Harry Green. Did you sign any Union card on or about August 3, 1946?
A. No, sir. It was after August.

WALTER SWEATT:

Q. Did you understand, when you signed that, you were signing to join the Union, or to authorize the Union to represent you, or——

A. Whenever I signed the book, I thought it was for to keep from striking. That's what I thought. I didn't know it was to sign no union, nor nothing like that.

Q. You understood that what— do you say that you understood what was being signed was everybody who wanted to sign not to strike?

108 A. That's right; yes, sir.

Q. And that's all you thought you were signing?

A. That's right; yes, sir.

JOHN SHAVER:

Q. Had you joined the Union before the strike began?

A. No, sir.

Q. Did you join the Union after the strike began?

A. Yes, sir.

Q. What was it that caused you to join the Union?

A. Well, they put out so many nails I couldn't get there. Had five flat tires getting to work.

MR. RAINS: I don't think that's material, Mr. Examiner. I move it be stricken.

MR. BLAKENEY: We will see.

TRIAL EXAMINER MARX: It is preliminary. It may be connected. I will let it stand for the time being. You can renew your motion later on.

By Mr. Blakeney:

Q. Did you speak to anybody representing the Union in regard to the nails you are talking about?

A. Well, no, sir, I didn't; not until I signed the Union card so the children could go back to school again. They cut the school bus off.

109 MR. RAINS: I object to that conclusion, Mr. Examiner.

By Mr. Blakeney:

Q. Explain what you mean about the nail business, first.

TRIAL EXAMINER MARX: Excuse me a minute. We will let it stand, subject to connection. Renew your motion at the close of this subject. I yet don't know what counsel is getting at. Now, it may appear.

By Mr. Blakeney:

Q. Explain what you mean by these nails.

A. There were so many of them in the road until I would get so many in my tires until——

Q. In the road whereabouts?

A. Well, it was about a quarter of a mile from my house. Out in the main road.

Q. Were there any nails at your house?

A. Plenty of them in my driveway.

Q. Now, what effect did those nails have on your being able to get out?

A. Well, it just picked—stick my tires full of holes and I couldn't go.

Q. Could any automobile transportation be used into or out of your place?

A. I don't see how there could be, hardly, because they quit coming.

Q. Who is "they"?

110 A. School buses and mail carriers. They all stopped.

Q. Do you know why they quit coming?

A. Yes, sir.

Q. Why?

A. Because them nails was in the road.

TRIAL EXAMINER MARX: Did somebody tell you that? That they quit coming for that reason?

THE WITNESS: The children couldn't go to school.

TRIAL EXAMINER MARX: No. Did somebody tell you that they quit coming for that reason?

THE WITNESS: They didn't tell me that they quit coming for that reason, but a man tears up his tires, he ain't going to come back.

TRIAL EXAMINER MARX: All right. Go ahead.

By Mr. Blakeney:

Q. Had the buses and mail and other automobile transportation come to your place always before the nails were there?

A. Yes, sir.

Q. Did they quit while the nails were there?

A. Yes, sir.

Q. Did they start up again after the nails left?

A. After I joined the Union, the nails quit coming and they come back.

Q. Did you talk to anybody about those nails at the time you joined?

111 A. Yes, sir.

Q. Who?

A. I told Mr. Morgan, "Let's stop the nails." He said "All right." There wouldn't be any more.

Q. Wouldn't be any more if what?

A. Any more nails.

Q. Did he tell you why there wouldn't be any more, or there wouldn't be any more if what? Was there any condition attached?

A. No, sir. I reckon he notified them to stop putting them out. They quit.

TRIAL EXAMINER MARX: We will strike that.

By Mr. Blakeney:

Q. Don't tell what you reckon. What did you say to him about signing the card, if anything, with reference to stopping the nails?

A. I told him, when I signed the card, that I wanted the nails stopped.

Q. What did he say?

A. He said they would stop them.

Q. Did they stop?

A. They did stop.

Q. Now, what, then was the reason you signed the card?

A. So that my children could get back in school and I could get my mail.

Q. Was that the only reason you signed it?

A. Yes, sir.

112 JAMES EDWARD KELLEY:

Q. Do you recall signing a Union card, or card authorizing the Union to represent you?

A. Yes, sir.

Q. Who was present when you signed——

MR. BLAKENEY: Strike that.

By Mr. Blakeney:

Q. There is in evidence, here, a list on which your name appears as having signed such card in the presence of Mr. Charles Morgan. Did you sign that card in the presence of Mr. Charles Morgan?

A. No, sir.

By Mr. Blakeney:

Q. Was Mr. Charles Morgan there when you signed?

A. No, sir.

Q. Was he anywhere around your house?

A. Morgan?

Q. Yes.

A. No, sir; he wasn't out there.

T. W. CHURCH, JR.

By Mr. Blakeney:

Q. Mr. Church, you are connected with the Highland
113 Park Manufacturing Company?
A. Yes, sir.
Q. How long have you been connected with that Company?
A. Since 1931.
Q. What is your capacity with respect to the Rock Hill plant of that Company?
A. Well, I am the active head. More or less the General Manager.
Q. Are you the top official in the Company who is active, in charge of the management of the Rock Hill plant?
A. Yes, sir.
Q. There has been introduced in evidence by the General Counsel a paper writing marked his Exhibit No. 3 entitled "An Agreement For Consent Election." I will ask you to look at it and state whether that is a copy of the paper you signed in behalf of the Highland Park Company?
A. Yes, sir.
Q. Pursuant to that so-called agreement for consent election, was an election held at the Rock Hill plant of the Company.
A. Yes, sir.
Q. On or about when?
A. May 5th, I think.
114 Q. What year?
A. 1946.

MR. BLAKENEY: May it be agreed it was May 1st?

MR. RAINS: Yes.

MR. BLAKENEY: May 1st is the exact date.

TRIAL EXAMINER MARX: Do you wish to correct your testimony?

THE WITNESS: Yes, sir.

TRIAL EXAMINER MARX: That it's May 1, 1946?

THE WITNESS: Yes, sir.

By Mr. Blakeney:

Q. Do you recall—and this is in your evidence but merely to fill in the outline of matters, here—do you recall what the counted ballots were for the Union and against the Union?
A. 197 for the Union; 194 for the Company; and the challenged ballots.
Q. Among the challenged ballots, were there seven of those challenged ballots?

A. Seven ballots of the drawing-in girls that lived in Charlotte.

Q. Now, after the election had been held and the vote was, as you say, did the Company recognize and deal and bargain with the Textile Workers Union of America, CIO?

A. No, sir.

115 Q. Why did the Company not do so?

TRIAL EXAMINER MARX: I think that that's a question for me to determine from the facts, Mr. Blakeney. The way the question is asked.

By Mr. Blakeney:

Q. What position did the Company take or express with respect to its dealing, recognizing and bargaining with the Union?

A. We told the Union and Mr. Joy——

Q. Who is Mr. Joy?

A. He is a Labor Board field man, I presume you would say, who came to see us.

Q. All right.

A. We told them that we would not bargain with the Union until the seven votes were counted of the employees who were on the payroll and were eligible to vote.

TRIAL EXAMINER MARX: Could you help me by fixing the time of these two conversations, if you can? I realize that there is correspondence in evidence which bears on it and, of course, which speaks for itself and which bears certain dates.

MR. BLAKENEY: I will bring it out.

TRIAL EXAMINER MARX: All right, sir.

By Mr. Blakeney:

Q. After the election was held, did you have some several—different conversations with any representative of the Union?

A. Yes, sir.

Q. Who?

116 A. Mr. Fullerton, I believe is the only one.

Q. Was there more than one of such conversations?

A. Yes, there was, I would say three or four telephone calls and probably two or three conferences.

Q. And what did Mr. Fullerton, in behalf of the Union, ask you to do?

A. Well, we had received a contract, a proposed contract from him. He asked us to bargain, discuss the contract.

Q. Did you state to him what the Company's position was with respect to that request?

A. We told him that we would not bargain with him at all until these votes were counted. That we thought the people had a right

to vote. We knew they did, and it was just an arbitrary action saying they couldn't.

Q. You say you did have a conversation with a representative of the Board, Mr. Joy, on the same subject?

A. Yes, sir.

Q. What, if any, position did you express to him on that same matter?

A. We told him exactly the same thing.

Q. Now, at any time, in any conversation with either the—or any other communication, whether in writing or orally, has the Company taken any position other than that, either with Union representatives or Board representatives?

117 A. We told them this: We told both the Union representative and the Board representative that if they would count those votes, that we would abide by the decision and if it was in favor of the Union, we would bargain, and we were led to believe that they would be counted.

Q. Well, what do you mean by "led to believe they would be counted"?

A. Well, the day after the election, the night of the election, I should say, Mr. Joy asked several of us to meet in our office the next morning to discuss these challenged votes. We went down there and had a short talk with him.

Q. What did he tell you was the purpose of him asking you to meet?

A. Well, he wanted to ask some questions about these girls. The votes that he had——

Q. What girls?

A. The drawing-in girls, seven of which he had challenged, and he had the votes—ballots in a sealed envelope.

Q. Seven of which had been challenged?

A. Yes, sir.

Q. All right. Now, what was said and done on the occasion of that meeting?

A. Well, he asked a good many questions about the girls and we answered them the best that we could, and we left with the understanding that we would be allowed to present evidence and facts to the Labor Board in regard to them and that when it was decided that the votes would be opened, that they would

118 be opened in Atlanta in front of a representative of the CIO and a representative of the Company.

Q. On that occasion, did you request opportunity to present the facts and the evidence, or not?

A. Yes, sir.

Q. How?

A. Yes, sir.

Q. Did you understand that you were then and there being given such opportunity?

A. Well, I understood we would be given opportunity.

TRIAL EXAMINER MARX: Mr. Blakeney, his understanding, I will tell you right now, may not be of very much assistance unless he relates exactly what Mr. Joy, to the best of his recollection, told him bearing on the subject, because his understanding may very well be a conclusion and would not be helpful.

By Mr. Blakeney:

Q. State to the best of your recollection what was said in regard to your request to have opportunity to present the facts and the evidence in regard to the eligibility of these seven people.

A. Well, I can't remember the exact words, but I asked that we be given the opportunity to present the complete facts and the complete picture to either the Board or whoever it was necessary. I can't remember Mr. Joy's words, but I think he said that we would be given that opportunity.

119 Q. Now, irrespective of what you think, will you state what was the substance of what he communicated to you on whether you would or wouldn't have an opportunity.

A. Well, he said we would have, or words to that effect.

Q. Would have what?

A. Opportunity to present the facts.

Q. All right. Now, did you, on that occasion, at that meeting, present the facts or not?

A. No, sir. We didn't go into any detail at that time.

Q. Has the Company ever been given an opportunity to give facts and evidence in regard to the—in regard to whether or not the seven persons you refer to were or were not employees of the Rock Hill plant?

A. No, sir.

By Mr. Blakeney:

Q. Now, along about the time of the strike did the Union or the Board, or any representative of the Board, suggest to you or any other representative of the Company, that the Union be recognized and bargained with upon the basis of a check of alleged new or recent Union cards signed up?

A. I don't remember just the date, but Mr. Fullerton asked that we do that.

Q. Mr. Fullerton asked that you do that?

A. Yes, sir.

120 Q. Did you agree to do so?

A. No, sir.

Q. What did you state was your position with respect to that?

A. We told him that we would rely on the election and——

Q. What did you state was your position or reason for not agreeing to the card check proposition?

A. Well, we wouldn't know the authenticity of the cards.

Q. Of the cards.

A. They weren't going to bring the cards and show them to us. They proposed we have an arbitrator or auditor, I believe, to check the cards against the payroll.

Q. What, if anything, would you be able to know as to whether the signatures were genuine?

A. We wouldn't know.

Q. What, if anything, would you be able to know with respect to whether the cards, if signed genuinely, were signed of the signator's own free will?

A. We wouldn't know. That's what we would question.

Q. That's what?

A. That's what we would question.

Q. Did you question it?

A. Yes, sir.

121 Q. To whom?

A. Mr. Fullerton.

Q. Did you have any reason to suppose that the cards might not be signed of free will?

A. We had had employees to tell us that.

Q. Later on, was there a petition presented to the Company with a large number of names on it and purporting to have been notarized?

A. Yes, sir.

Q. What position did you take with respect to that petition?

A. We didn't recognize that.

Q. Well, but what? What did you——

A. We didn't recognize that because we didn't know whether those people had signed that or whether they had been forced (P. 319) to sign it, coerced——

TRIAL EXAMINER MARX: Excuse me. Is this the position Mr. Church, or other representatives of the Company, took in their own office, or is it the position they expressed to somebody?

MR. BLAKENEY: He has testified to everything up to now he told Mr. Fullerton, and I am going to ask, on the petition, whether he told Mr. Fullerton.

TRIAL EXAMINER MARX: All right, sir. I am addressing myself to the last question.

A. I did tell Mr. Fullerton.

By Mr. Blakeney:

Q. You told him what?

A. We questioned the signatures and questioned whether
122 they were signed with their own free will and accord.

Q. Did you make any inquiry or investigation as to the person who purported to act as notary on it?

A. Yes, sir. We asked about Mr. Collins. We found out that he was a Union fellow.

Q. What do you mean, "A Union fellow"?

A. Belonged to the Union over to the bleachery.

Q. Yes.

A. And that put more doubt in our mind. Whether they would get a notary public with that connection.

By Mr. Blakeney:

Q. Now, Mr. Church, about when was the last time the Union ever asked the Company to recognize them; deal with them?

A. I would say about a month before the strike was over.

Q. Has the Union ever asked you to recognize them or deal with them since?

A. No, sir.

Q. From that time on, did you ever hear anything more about the matter, one way or the other, until this case was brought?

A. I haven't heard a word about it. I thought it was dead.

Q. Mr. Church, the employees whom you have referred to as drawing-in hands, the seven employees, I will ask you if
123 their names were as follows: Gertrude Boyd, Myrtie Corley, Phronie Fisher, Mildred Floyd, Virginia Moore, Pauline Rice, and Josephine Wilson?

A. Yes, sir.

Q. Were those persons on the payroll of the Rock Hill plant on April 12, 1946?

A. Yes, sir.

Q. Were they employees of the Rock Hill plant?

A. Yes, sir.

By Mr. Rains:

Q. Mr. Church, you said the night of the election Mr. Joy called a meeting for the next morning?

A. He just asked that we meet the next morning. He wanted to ask us some questions about these girls.

Q. Yes, of course, all the parties knew that some ballots had been challenged in the election?

A. Yes, sir.

Q. Did you meet at the Rock Hill plant?
A. In the Rock Hill plant; yes, sir.
Q. In the office of the plant?
A. Yes, sir.
Q. And I believe you stated that he asked a great many questions.
124 A. He asked to see the payrolls, and where these girls lived and questions of a similar nature; yes, sir.
Q. But do you recall saying that he asked a great many questions?
A. Well, I don't know how many, but—Yes; I would say he asked quite a few questions.
Q. But you say you didn't go into any detail at that time?
A. No, sir. It was our understanding that we would later have a chance to put the facts before the Board in Atlanta. That he was up there to run the election.
Q. And how long did the meeting last?
A. Well, I couldn't answer that.
Q. Could you estimate?
A. Possibly an hour.

TRIAL EXAMINER MARX: Pardon me. Was this after the election?
THE WITNESS: Yes. It was the next morning.
TRIAL EXAMINER MARX: The election had already been held?
THE WITNESS: Yes, sir.
TRIAL EXAMINER MARX: And at that time you knew that there were these seven challenged ballots, in any event.
THE WITNESS: Yes, sir.
TRIAL EXAMINER MARX: Is that so?
THE WITNESS: Yes, sir.
125 TRIAL EXAMINER MARX: Go ahead. I merely wanted to establish the time.

By Mr. Rains:

Q. Now, was Mr. Blakeney present at that meeting?
A. Yes, sir. We called him down to listen in. He wasn't there the night before.
Q. No, but he was there the morning in the meeting, following the election, with Mr. Joy?
A. Yes, sir.
Q. And I believe the Union was represented in the meeting too, were they not?
A. Yes, sir.
Q. I think the majority of the representatives were Company people, weren't they?
A. I wouldn't say that. I don't remember how many of the Union people were there. We had our superintendent and myself and Mr. Blakeney.

Q. And who else for the Company; do you recall?

A. The general superintendent from Charlotte. Yes. He was there.

Q. Did you have your Company observers in the election? Were they in the meeting?

A. I don't remember. They may have been. I don't know.

Q. You don't remember? I understood you to say that you think that Joy said you would be given an opportunity to present the complete facts.

126 A. He either said that or something to that effect. We were led to believe that.

Q. And you say you have never been given an opportunity to present the facts since that time?

A. No, sir.

Q. Do you have any recollection or knowledge of the request of the Respondent to the Regional Director on May 8th stating that if the challenges should be resolved against the Company, then they wanted a formal hearing before a Trial Examiner on the Matter?

A. That we asked that?

Q. Yes. The Respondent.

A. Yes, sir.

Q. Then you recall the certification came out on May 29th, 1946?

A. I remember it coming out.

Q. That was some 28 days later; from May 2nd.

A. Yes, sir.

Q. Did you, at any time, from May 2nd until May 29th, seek to send to the Regional Director any of this evidence you claimed bore on the status of the challenged persons?

A. I don't remember that we did. We didn't hear anything from them. It was our understanding that we would have an opportunity to do this.

Q. Were you waiting to see whether the challenges would be resolved against the Respondent before you put on the evidence with respect to the challenged persons?

127 A. I don't know about that.

Q. Mr. Church, then, as nearly as you can recall, what did Mr. Joy say when he opened the meeting or first commented at the meeting on May 2, 1946?

A. I couldn't answer that. It would be a guess.

Q. Well, tell me again, what did you understand was the purpose of that meeting.

A. I understand the purpose of the meeting was for him to get some information in regard to these challenged ballots.

TRIAL EXAMINER MARX: Did you give him the information?

THE WITNESS: We gave him anything he asked for; yes sir.

TRIAL EXAMINER MARX: No. Did you give him all information in your possession about those challenged ballots?

THE WITNESS: I wouldn't say we gave him all in our possession. We gave him everything he asked for.

TRIAL EXAMINER MARX: Can you tell me now what you gave him?

THE WITNESS: No, sir; I cannot. Sorry. I remember he wanted to check the payrolls. He did that. That's one thing I definitely remember.

TRIAL EXAMINER MARX: But did you tell him what your position was on the challenged ballots?

128 THE WITNESS: We told him that those girls were supposed to vote, because the day before the election him and the Union Committee was in the office, met with us, they went carefully over the payroll and passed on everybody on the payroll, that they could vote, the payroll of April 12th. That is what was asked for in the consent election.

TRIAL EXAMINER MARX: You gave him that information?

THE WITNESS: Yes, sir.

TRIAL EXAMINER MARX: And is that the information you had in mind presenting, as you say, in Atlanta?

THE WITNESS: Well, Mr. Blakeney wasn't down there during the election, and when these votes was challenged, nobody knew they would be challenged because they were employees of the Company. Now, when Mr. Joy asked for this meeting the next day, we merely asked Mr. Blakeney to come down to listen to what was going to happen so he could help us get together the facts and present them to the Board later. I don't remember Mr. Blakeney taking very much part in it, as a matter of fact. He was more or less listening so he could help us later. We weren't trying to present all the facts. Up to that time, up to that time they had been challenged it had been our position—rather, there was no question in our mind but what everybody on the payroll of April 12th should vote with the exception of the overseers.

TRIAL EXAMINER MARX: And my understanding is that you explained that position to Mr. Joy?

129 THE WITNESS: Yes, sir.

TRIAL EXAMINER MARX: If you know, was that before he looked at the payroll?

THE WITNESS: Let me explain this first. Mr. Joy saw the payroll the day before the election, and so did the Union Committee and these Charlotte girls were on the payroll. They were looked for by the Committee, found, and I assumed they passed them, because it was our understanding when they went out everybody on that payroll would be allowed to vote unless challenged there.

By Mr. Blakeney:

Q. Did the questions put to you by the Board representative cover the whole situation with respect to these girls or not?
A. No, sir.
Q. Did you ask for an opportunity to present the whole situation with respect to these girls being or not being employees?
A. I did.

MILDRED FLOYD:

By Mr. Blakeney:

Q. Your name is Mildred Floyd?
A. That is right.
Q. Where do you work?
A. Highland Park, No. 2, Rock Hill.
130 Q. Rock Hill?
A. Yes.
Q. What is your job?
A. Drawing-in hand.
Q. How did you come to be a drawing-in hand at the Rock Hill plant for the Highland Park Company?
A. I asked for a job there. Had my sister ask for a job.

By Mr. Blakeney:

Q. This occasion when you say you asked for a job at the Rock Hill plant, was that prior to April 12, 1946? Was that before April 12, 19—
A. Yes.
Q. Upon your applying for—or asking for a job, I believe is the way you put it, at the Rock Hill plant, did you get a job down there?
A. Yes.

By Mr. Blakeney:

Q. What is the first day you worked at the Rock Hill plant, if you remember?

TRIAL EXAMINER MARX: Now, Mr. Blakeney, I am going to ask you for the purpose of offering this testimony. What is the object of that question?

MR. BLAKENEY: To prove that she was on the payroll of this plant prior to April 12, 1946, the date fixed in the consent election agreement as the date for determination of who should be entitled to vote.

131 TRIAL EXAMINER MARX: Would the purpose of that testimony be to present facts enabling the Board to determine

whether in fact she was entitled to vote, contrary to the ruling of the Regional Director?

MR. BLAKENEY: Yes, sir, I think that would necessarily follow. The Regional Director ruled she wasn't entitled to vote, and I want to present evidence to the effect that she was all that the consent agreement called for in defining who could vote; namely, that she was an employee of the Rock Hill plant on April 12, 1946, that being the definition in the consent election agreement as to who should vote.

TRIAL EXAMINER MARX: Yes, of course, I understand. Then the question arises whether or not I can go behind the Regional Director's determination that she wasn't entitled to vote. That is behind his investigation and his conclusion.

MR. BLAKENEY: Well, sir, as to that, we say two things: We say, first, that the facts with respect to whether or not these persons were employees on April 12th were never presented by the Company to any representative of the Board; that the Company all along in the early stages of the matter thought it was going to have opportunity to present such facts and never got that opportunity; that Mr. Joy, representative of the Board, did on one occasion come and ask some questions of the Company, but that the Company did not at that time understand that he was making any thorough canvass or investigation of the situation; that the Company genuinely was under the impression that further inquiry, canvassing, and thorough investigation was going to be made, and that upon that
132 being made the Company was going to have opportunity to present the full facts.

. . . .

MR. BLAKENEY: That that opportunity never came, and that the Regional Director went on and issued his report and finding without the facts from the Company's standpoint ever having been presented to him.

. . . .

MR. BLAKENEY: Yes, sir. The Company definitely contends that it was arbitrary on the part of the Regional Director. On the Regional Director's part, it was arbitrary to make a finding on this subject without the Company being given the opportunity which it thought it was going to be given to present all the facts on the issues. Now, that the finding and the ruling were further arbitrary in that they are in flagrant disregard of the facts in regard to the matter.

Now, whether because they didn't get the facts, I don't know, but at any rate, in flagrant disregard of the truth and the facts. In other words, that the Regional Director's office made a finding and ruling that these people were not employees, when the truth and the

fact is that if they were human beings, they were employees and nothing else but employees of this plant; and for the Regional Director to say they were not is simply for the Regional Director to say black is white. For the Regional Director to say they were not employees on the payroll of this Company April 12, 1946, is equivalent to the Regional Director saying a weaver in that plant is not a weaver, or a weaver in that plant, I will declare
133 ineligible to vote. That it was an arbitrary act in that respect to say that these people were not entitled to vote, because it involves saying they were not employees on April 12th, which was a finding totally in disregard of the truth, and on which —to get back to the original point—on which we were not given the opportunity to present the truth.

. . . . . .

MR. BLAKENEY: In view of the Examiner's last ruling, the Respondent makes the following offer of proof; namely, that if E. D. Newton, Arthur Jerrett, Fred McNinch, T. W. Church, Jr., Gertrude Boyd, Virginia Moore, Pauline Rice, Josephine Wilson, Phronie Fisher, Myrtie Corley, Louise Bailes, Mildred Floyd, Gretchen Fisher, and Alec McFadden were permitted to testify, and the Respondent offers said witnesses as being present and ready to testify as follows:

That they would testify that during the early part to the middle of March, 1946, the Rock Hill plant of the Respondent was commencing a change-over in the nature of its product from plain goods to fancy and striped goods; that such change-over in the nature of the plant's product called for and required the use of additional drawing-in hands; that drawing-in hands were scarce and difficult to find at that time; that the Rock Hill plant had been inquiring for some weeks prior to the period above mentioned of all persons who sought employment with it as to whether they were drawing-in hands or could do drawing-in work; that the Rock Hill plant had made diligent inquiry in various directions in an effort to obtain drawing-in hands; that the Company had not been able
134 to obtain any additional drawing-in hands in the immediate vicinity of Rock Hill;

That shortly prior to the middle of March, 1946, the Company's Charlotte plant had installed and was putting into operation certain new machinery known as Barber-Coleman Automatic drawing-in machines; that the Company's Charlotte plant at the time referred to was and for many years had been a fancy goods or striped goods plant, and by reason of that being the nature of the Charlotte plant's product, had for years employed a number of drawing-in hands, such number being in the neighborhood of 75 such hands; that as the result of the installation and commencement of the

operation of the machines above referred to, the need in the Charlotte plant for drawing-in hands was declining and that a large proportion of said drawing-in hands were not working full time at about the middle of March, 1946;

That Mr. Newton, the superintendent of the Rock Hill plant, at various times had consulted and talked with the superintendent of the Charlotte plant in regard to getting from some source drawing-in hands for the Rock Hill plant in view of changing over of the nature of the product at the Rock Hill plant; that the superintendent of the Charlotte plant informed Mr. Newton, superintendent of the Rock Hill plant, as to the situation in the Charlotte plant in respect to the installation and beginning operations of the aforesaid machines;

And that the superintendent of the Rock Hill plant then and thereupon, about the middle of March, 1946, communicated with four of the persons named above, namely, Gertrude Boyd,
135 Virginia Moore, Pauline Rice and Josephine Wilson, and inquired of them as to whether they would be willing to come to work at the Company's Rock Hill plant as drawing-in hands at the Rock Hill plant, and that all of the four stated that they desired to do so; that thereupon said four employees quit their employment at the Company's Charlotte plant and hired as employees to the Company's Rock Hill plant; the first day of their working at the Company's Rock Hill plant being March 25, 1946; that shortly thereafter others of the above named individuals, namely, Phronie Fisher, Myrtie Corley, Louise Bailes, and Mildred Floyd notified the superintenedent of the Rock Hill plant that they, too, would like to become hired as drawing-in hands at the Company's Rock Hill plant; that they stated that the reason they desired to do so was that they had been told by Gertrude Boyd, Virginia Moore, Pauline Rice and Josephine Wilson what the drawing-in work was at the Rock Hill plant, the earnings to be had, and the prospects for continued employment in the drawing-in work; that they knew that the drawing-in work in the Charlotte plant was diminishing and curtailing.

MR. BLAKENEY: (Continuing) That upon the above-named Phronie Fisher, Myrtie Corley, Louise Bayles and Mildred Floyd notifying the Superintendent of the Rock Hill plant that they desired to become drawing-in hands at the Rock Hill plant, they were hired in such capacity.

That they quit their job at the Charlotte plant and became hired as employees at the Company's Rock Hill plant. That the
136 first days that they worked at the Company's Rock Hill plant were respectively as follows:

Myrtie Corley, April 1, 1946;
Mildred Floyd, April 1, 1946;

Louise Bayles, April 6, 1946;
Phronie Fisher, April 8, 1946;

That thereafter two additional persons who were working as drawing-in hands at the Company's Charlotte plant; namely, Gretchen Fisher and Ellie McFadden; likewise, and in similar manner made application to the Superintendent of the Company's Rock Hill plant and were similarly hired in at the Rock Hill plant and similarly quit their employment at the Company's Charlotte plant.

That the first days on which the two last named individuals worked at the Rock Hill plant were May 6, 1946 in each instance.

That upon thus quitting their employment in the Charlotte plant, and becoming hired as employees at the Rock Hill plant, the above-named individuals severed all connection of every nature with the Charlotte plant and retained no connection of any nature therewith.

That more particularly they were all taken off the payroll of the Charlotte plant. That employment severance cards were made out for all of them and filed in the Company's Charlotte plant.

That their Employee Insurance which they had been carrying at the Company's Charlotte plant was terminated and cancelled and that on all reports and records kept by the Company's
137 Charlotte plant with respect to such employees; namely, Federal Social Security cards, and reports, and North Carolina State Unemployment Compensation cards and reports, their names were dropped as of the dates they quit their work in the Charlotte plant.

That all of the named women, upon being employed as above stated at the Rock Hill plant, were put on the payroll of the Rock Hill plant and became listed as employees of the Rock Hill plant on all the Rock Hill plant's Social Security cards and reports and State Unemployment Compensation cards and reports.

That they were offered the right to take Employee Insurance at the Rock Hill plant and accepted such insurance and applied therefor but were required to wait 60 days before obtaining such insurance and that such 60-day wait was uniformly required of all persons who made application for employment and became hired as employees at the Rock Hill plant.

That the Rock Hill plant, from the date of the said individuals commencing work in the Rock Hill plant, began to report them on all its employee reports to State and Federal Government.

That they, from such dates, began to be figured in on the Rock Hill plant's Workmen Compensation Insurance premium.

That they, from the date of their commencing work at the Rock Hill plant, began to be paid by check drawn on a Rock Hill bank, as are all other employees of the Company's Rock Hill plant.

TRIAL EXAMINER MARX: Would they testify to that? Those people? That last item?

138 MR. BLAKENEY: That they were paid by check.

TRIAL EXAMINER MARX: I mean, that that is the custom of all the employees in the Rock Hill plant.

MR. BLAKENEY: Mr. Newton, the Superintendent, would testify that all employees are paid by check on the same Rock Hill bank.

TRIAL EXAMINER MARX: To that effect. Thank you.

MR. BLAKENEY: Yes, sir. That the only difference in any respects between these individuals, after they commenced to work at the Rock Hill plant, the only differences between them with respect to having status of employees at Rock Hill and other persons working at the Rock Hill plant are that they came from longer distance to work than most of the Rock Hill employees but that many other of the Rock Hill plant employees did come for distances of considerable size to their work and some of the other employees as far as these.

That although these individuals continued to live in Charlotte, North Carolina, that they did not live in any property or houses belonging to the Company's Charlotte plant but in houses and homes of their own.

That they were unable to find residence or living accommodations in Rock Hill.

That a factual difference between the pay of the individuals named and other drawing-in hands at the Company's Rock Hill plant is that these individuals draw more pay than the other drawing-in hands at the Rock Hill plant. That there are only—

that there were, at the times referred to above, and still are,

139 only two to four other drawing-in hands, in addition to the individuals named.

That the individuals named also are paid at their regular rate of pay for the time elapsing while they are enroute to and from Charlotte.

That one of the individuals named; namely, Mrs. Virginia Moore; furnishes an automobile in which some of the individuals named ride to and from Charlotte regularly and that the Company reimburses Mrs. Moore for her mileage upon the use of her car at the rate of six cents per mile.

That the greater pay above referred to received by the persons named and paid by the Company to them was the only basis upon which the Company was able to hire such persons to work in its Rock Hill plant, they being unwilling to work in the Rock Hill plant upon any lower terms and the Company being unable to obtain any other drawing-in hands to do equivalent work on any terms better to the Company.

That the persons named, being experienced and skilled in drawing-in work on fancy and striped goods, are the only drawing-in

hands in the Company's Rock Hill plant who are so skilled and experienced and the only drawing-in hands who can handle such work, and that they are essential and indispensable employees to the Rock Hill plant in that sense and for that reason.

That the individuals named from the dates above referred to on which they commenced work at the Company's Rock
140 Hill plant have at all times and ever since worked as such employees at the Company's Rock Hill plant regularly and without interruption except for such as may have been occasioned briefly by illness, or the like; except that one of the above-named, Mrs. Myrtie Corley quit the Company's employment on August 2, 1946, and has never worked for the Company since, and Mrs. Louise Bayles quit the Company's employment on September 15, 1946, and has never worked for the Company since.

TRIAL EXAMINER MARX: It might have been shorter to have the witnesses testify.

MR. BLAKENEY: I am about through now. I think it would have taken all eight of them a little longer than this.

That the aforenamed Myrtie Corley, upon quitting her work at the Rock Hill plant, immediately re-applied for employment as a drawing-in hand at the Charlotte plant and was refused employment there for the reason that drawing-in hands were—no additional drawing-in hands were needed at that plant.

That likewise Mrs. Louise Bayles, after quitting her employment at the Rock Hill plant, applied for employment as a drawing-in hand at the Charlotte plant and was refused such employment for the same reason.

That the persons named in all respects share in the activities, social and otherwise, with the other employees of the Rock Hill plant. That they contribute to various mutual and common employee funds, along with other Rock Hill employees.

That other Rock Hill employees, on occasion, engage in social activities with the individuals named in the homes of the
141 said individuals in Charlotte, and that the circumstances with respect to such mutual interests, as between the individuals named and the other Rock Hill employees are no different from similar relationships between Rock Hill employees not involving——

TRIAL EXAMINER MARX: Who would testify to that last, Mr. Blakeney?

MR. BLAKENEY: All these girls.

TRIAL EXAMINER MARX: Would they know about the relationships of all other employees of the Rock Hill plant? Would they be able to testify to that?

MR. BLAKENEY: They would say this: That we engage with the Rock Hill employees in the activities that the other employees engage in here.

TRIAL EXAMINER MARX: Yes. That was the preceding statement you made. It's merely your offer of proof. I wanted to be sure I understood you correctly. Go ahead, sir.

MR. BLAKENEY: That the persons named have participated in all wage increases that other Rock Hill employees have participated in since the date that they commenced to work at Rock Hill.

That all letters and communications and notices which have gone from the Company to any other employees of the Rock Hill plant; general notices, communications; have likewise gone to these individuals. That one such example was a letter written by the Company prior to the election referred to in this proceeding held
142 on May 1, 1946, in which the Company among other things, urged all employees to vote in said election. That the individuals named received such letters, along with all other employees of the Rock Hill plant.

I believe that's about all of that, Mr. Examiner. Let me ask——

TRIAL EXAMINER MARX: Yes, sir, I can't conceive that you have left anything out.

MR. BLAKENEY: I am not—well, I may have.

That all of the individuals named except Myrtie Corley and Louise Bayles are still and today working as employees, drawing-in hands, at the Company's Rock Hill plant.

That's all.

. . .

143 Caption omitted

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 6082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY, RESPONDENT

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Filed March 14, 1950

To the Honorable, the Judges of the United States Court of Appeals for the Fourth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp.

II, Secs. 151, *et seq.*), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Highland Park Manufacturing Company, Rock Hill, South Carolina, and its officers, agents, successors, and assigns. The proceedings resulting in said order are known upon the records of the Board as "In the Matter of Highland Park Manufacturing Company and Textile Workers Union of America, CIO," Cases Nos. 10-R-1803 and 10-C-2066.

In support of this petition the Board respectfully shows:

(1) Respondent is a North Carolina corporation, engaged in business in the State of South Carolina, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

144 (2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on June 29, 1949, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, and its officers, agents, successors, and assigns. On July 6, 1949, the Board issued an order correcting its Decision and Order. The aforesaid order, as corrected, provides as follows:

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Highland Park Manufacturing Company, Rock Hill, South Carolina, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all production and maintenance employees, at the Respondent's Rock Hill, South Carolina, plant, excluding clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act;

(b) Interfering in any other manner with the efforts of Textile Workers Union of America, CIO, to bargain collectively on behalf of employees in the aforesaid bargaining unit.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers Union of America, CIO, as the exclusive bargaining repre-

sentative of all production and maintenance employees at the Respondent's Rock Hill, South Carolina, plant, excluding clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act, with respect to rates of pay, wages, hours of employment, or other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Rock Hill, South Carolina, copies of the notice attached hereto, marked Appendix A.[10]

145 Copies of such notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent or its representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

(3) The Board's Decision and Order, also order correcting Decision and Order were served upon Respondent on June 29 and July 6, 1949, respectively, by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said

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[10] In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

order of the Board, and requiring Respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By (S) A. Norman Somers,
A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C. this 13th day of March 1950.

APPENDIX A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We will bargain collectively upon request with Textile Workers Union of America, CIO, as the exclusive representative of all employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment, or other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

146

All production and maintenance employees at the Rock Hill, South Carolina, plant, exclusive of clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act.

We will not in any manner interfere with the efforts of Textile Workers Union of America, CIO, to bargain collectively with us as the exclusive representative of the employees in the appropriate unit described above.

HIGHLAND PARK MANUFACTURING COMPANY,
(Employer)

By ——— ———
(Representative) (Title)

Dated ———.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

DISTRICT OF COLUMBIA, ss:

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this

verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

(S) A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 13th day of March 1950.

[SEAL] (S) ROSE MARY FILIPOWICZ,
Notary Public, District of Columbia.

My Commission expires March 15, 1953.

March 14, 1950, notification to respondent, together with copy of the petition, is mailed to Highland Park Manufacturing Company, Rock Hill, South Carolina.

March 16, 1950, the appearance of David P. Findling, Associate General Counsel, A. Norman Somers, Assistant General Counsel, and Frederick U. Reel, Attorney, is entered for the petitioner.

147 March 30, 1950, the appearance of Whiteford S. Blakeney is entered for the respondent.

April 27, 1950, the appendix of petitioner is filed.

May 25, 1950, motion of petitioner for leave to file brief in excess of 50 printed pages is filed.

ORDER PERMITTING PETITIONER TO FILE BRIEF IN EXCESS OF 50 PRINTED PAGES

Filed May 27, 1950

[Style of court and title omitted.]

Upon the motion of the Petitioner by its counsel, and for good cause shown, special permission is hereby granted Petitioner in the above-entitled case to file brief in excess of 50 printed pages, but not exceeding 53 printed pages.

May 26, 1950.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.

May 29, 1950, brief on behalf of the petitioner is filed.

June 9, 1950, brief and appendix on behalf of the respondent are filed.

ARGUMENT OF CAUSE

June 13, 1950 (June term, 1950) cause came on to be heard before Parker, Soper, and Dobie, Circuit Judges, and was argued by counsel and submitted.

United States Court of Appeals for the Fourth Circuit

No. 6082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

HIGHLAND PARK MANUFACTURING COMPANY, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

(Argued June 13, 1950. Decided September 2, 1950)

OPINION

Filed September 2, 1950

Before PARKER, SOPER, and DOBIE, Circuit Judges.

Frederick U. Reel, Attorney, National Labor Relations Board (David P. Findling, Associate General Counsel; A. Norman
148 Somers, Assistant General Counsel; Marcel Mallet-Prevost and Samuel M. Singer, Attorneys, National Labor Relations Board, on brief), for Petitioner, and Whiteford S. Blakeney (Pierce and Blakeney on brief) for Respondent.

PARKER, Circuit Judge:

This is a petition to enforce an order of the National Labor Relations Board which directed the Highland Park Manufacturing Co. at its Rock Hill, S. C., plant to bargain with the Textile Workers Union of America, affiliated with the C. I. O., as the bargaining agent of its employees. Question is raised as to whether the union obtained a majority vote in the election held to determine the bargaining representative, but we need not go into this, as we think that the Board proceeded upon an erroneous theory of law in ordering the company to bargain with the T. W. U. A. upon its petition, when that union at the time was affiliated with the C. I. O., whose officers had not then complied with the statute requiring the filing of noncommunist affidavits. The Board applied the rule which it had laid down, contrary to the opinion of general counsel and with one member dissenting, in *Matter of Northern Virginia Broadcasters*, 75 N. L. R. B. 11.

The question presented here is identical with that before the Court of Appeals of the Fifth Circuit in *N. L. R. B.* v. *Postex Cotton Mills*, 5 Cir. 181 F. 2d 919, which involved the application of the same rule; and we agree with the decision of that court reversing the action of the Board for the reasons set forth in the comprehensive and able opinion of Judge Russell.

We find no ambiguity in the language of the governing statute. On the contrary it provides as clearly as language can that the power of the Board may not be invoked by a labor organization unless there is on file the affidavits which the statute requires executed "by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit."* The C.I.O. is unquestionably a national labor organization and the T. W. U. A. is admittedly affiliated with it. The argument of the Board that filing is required only of the officers of an organization of which the
149 bargaining union is a constituent and subordinate unit is negatived by the language which requires filing by the officers of the international organization of which the bargaining union is "an affiliate" as well as where it is a "constituent unit."

As there is no ambiguity in the language of the statute, there is no occasion to resort to the rules of construction; but, if resort be had to these, the result is the same. The reason and purpose of the provision was to eliminate Communists and other seeking the overthrow of the Government by force from positions in which they would be able to use the power of labor organization, which the statute was fostering, in the aid of political strikes and other

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* The statute is as follows: "No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under subsection (e) (1) of this section shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of sections 286, 287, 1001, 1022, and 1023 of Title 18 shall be applicable in respect to such affidavits." Sec. 9 (h), Labor Management Relations Act, 61 Stat. 146, 29 USCA sec. 159 (h).

dangerous disruptions of industry. As to this, Chief Justice Vinson in the recent case of *C. I. O.* v. *Douds*, 339 U. S. 382, 70 S. Ct. 674, said:

"The constitutional justification for the National Labor Relations Act was the power of Congress to protect interstate commerce by removing obstructions to the free flow of commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937). That Act was designed to remove obstructions caused by strikes and other forms of industrial unrest, which Congress found were attributable to the inequality of bargaining power between unorganized employees and their employers. It did so by strengthening employee groups, by restraining certain employer practices, and by encouraging the processes of collective bargaining.

"When the Labor-Management Relations Act was passed twelve years later, it was the view of Congress that additional impediments to the free flow of commerce made amendment of the original Act desirable. * * *

"One such obstruction, which it was the purpose of sec. 9 (h) of the Act to remove was the so-called 'political strike.' Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. And other evidence supports the view that some union leaders who hold to a belief in violent overthrow of the Government for reasons other than loyalty to the Communist Party likewise regard strikes and other forms of direct action designed to serve ultimate revolutionary goals as the primary objectives of labor unions which they control. * * *

"It is sufficient to say that Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not
150 to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action."

Mr. Justice Jackson, in his concurring opinion in the Douds case, had this to say, as to the reason and purpose of the statutory provision:

"The Communist Party * * * is not primarily interested in labor's vote, for it does not expect to win by votes. It strives for control of labor's coercive power—the strike, the sit-down, the

slow-down, sabotage, or other means of producing industrial paralysis. Congress had legalized the strike as labor's weapon for improving its own lot. But where Communists have labor control, the strike can be and sometimes is perverted to a party weapon. In 1940 and 1941, undisclosed Communists used their labor offices to sabotage this Nation's effort to rebuild its own defenses.

"This labor leverage, however, usually can be obtained only by concealing the Communist tie from the union membership. Whatever grievances American workmen may have with American employers, they are too intelligent and informed to seek a remedy through a Communist Party which defends Soviet conscription of labor, forced labor camps and the police state. Hence the resort to concealment, and hence the resentment of laws to compel disclosure of Communist Party ties. The membership is not likely to entrust its bargaining power, its records, and its treasury to such hands. When it does, the union finds itself a more or less helpless captive of the Communist Party. Its officers cease to be interested in correcting grievances but seek to worsen and exploit them; they care less for winning strikes than that they be long, bitter and disruptive. They always follow the Communist Party line, without even knowing its source or its objectives. The most promising course of the Communist Party has been the undercover capture of the coercive power of strategic labor unions as a leverage to magnify its power over the American people."

In the light of this purpose, it is perfectly clear that it is much more important to exclude communists and others plotting the overthrow of the government by force from holding office in the great national labor organizations, such as, the C. I. O. and the A. F. L. than to exclude them from office holding in their affiliates; and it is not reasonable to suppose that Congress did not intend the officers of the former to be covered by its provisions. It is true that it is the officers of the affiliates who call the strikes; but it is the officers of the national or parent organizations who shape labor policies that cause the strikes to be called, and this is particularly true of general strikes or strikes having a political pur-
151 pose. As was well said by Member Gray in his dissenting opinion in *Northern Virginia Broadcasters, supra:*

"The officers of the A. F. L. and the C. I. O. have been recognized as the spokesman and representatives of organized labor in this country. It was the A. F. L. Executive Council which recommended on December 15, 1941, that 'no-strike policy shall be applied in all war and defense * * * industries.' On the following day, the conference of A. F. L. presidents adopted this recommendation.

"The extent of the influence wielded by the A. F. L. is also apparent from the control which it exercises over the 'jurisdiction'

of its member unions. Awards of the governing body may be subject to enforcement through expulsion from the organization. Conversely, the member unions exercise a measure of control over their parent organization through the election of its officers.

"It is therefore apparent that the A. F. L. may exercise direct and influential control over its constituent unions in important respects and that A. F. L. officers occupy a strategic position to affect the economic life of the Nation. Under these circumstances, it is inconceivable that Congress was not concerned with the Communist affiliation of the officers of the A. F. L. and C. I. O. in accomplishing its intended purpose of purging labor of Communist influence."

We have carefully considered the argument to the contrary in the majority opinion in *West Texas Utilities Co.* v. *N. L. R. B.*, D. C. App.— — F. 2d —; but we are not impressed by it. We agree with the statement of Judge Russell in the Postex case, *supra*, that the Congressional purpose was to "wholly eradicate and bar from leadership in the American labor movement, at each and every level, adherents to the communist party and believers in the constitutional overthrow of our government." If the Statute is construed in accordance with its express language to deny governmental support to unions that are affiliated with national organizations which refuse to comply with its anti-communist provisions, the result will be either that the national organizations will comply with the statute, or that they will be segregated from the effective body of loyal American labor by the withdrawal of their affiliates. In either event, the labor movement will be effectively projected from the danger of Communist leadership in the formulation of labor policies; and this is evidently the end to which the legislation was directed. We see no occasion to emasculate the statute by restorting to forced rules of interpretation when its language is perfectly clear and gives unqualified support to the purpose which Congress had in mind. The office of interpretation is to resolve ambiguities, not to create them.

152 Nothing contrary to our decision here was decided in *N. L. R. B.* v. *Harris-Woodson Co.*, 179 F. 2d 720, since in that case the question now before us was not raised. It was assumed in that case on all sides that the filing by the officers of the T. W. U. A. was a sufficient compliance with the statute and the only question was whether the bargaining union could avail itself of the change of affiliation which had taken place.

For the reasons stated, enforcement of the Board's order will be denied and the order will be set aside.

Enforcement denied.

In the United States Court of Appeals for the Fourth Circuit

No. 6082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

HIGHLAND PARK MANUFACTURING COMPANY, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

DECREE

Filed and Entered September 2, 1950

This cause came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it on the 29th day of June, 1949, as corrected by order issued on the 6th day of July, 1949, in a proceeding before said Board numbered 10-C-2066, entitled "In the Matter of Highland Park Manufacturing Company and Textile Workers Union of America, CIO"; upon the transcript of record in said proceeding certified and filed in this court; and the said cause was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed by the United States Court of Appeals for the Fourth Circuit, that the enforcement of said order of the National Labor Relations Board be, and the same is hereby, denied, and that said order be, and the same is hereby, set aside.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.
MORRIS A. SOPER,
U. S. Circuit Judge.
ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

On another day, to wit, October 3, 1950, a certified copy of the decree of this Court is transmitted to the National Labor Relations Board.

153 In the Supreme Court of the United States

[Title omitted]

STIPULATION

Subject to this Court's approval, it is hereby stipulated and agreed, by and between counsel for the respective parties hereto,

that for the purpose of the petition for writ of certiorari the printed record may consist of the following:

1. Appendix to brief of petitioner.
2. Appendix to brief of respondent.
3. The proceedings had before the United States Court of Appeals for the Fourth Circuit.

It is further stipulated and agreed that petitioner will cause the Clerk of the United States Court of Appeals for the Fourth Circuit to file with the Clerk of the Supreme Court of the United States a complete certified record on appeal in the United States Court of Appeals for the Fourth Circuit; and that, in the event the petition for writ of certiorari is granted, the printed record shall consist of the proceedings in the court below and such portions of the complete record on appeal in that Court as the parties may designate.

It is further stipulated and agreed that either of the parties hereto may refer in his brief to the record filed in the Supreme Court of the United States.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.
W. S. BLAKENEY,
Counsel for Respondent.

Dated: November 10, 1950.

Clerk's Certificate to foregoing transcript omitted in printing.

154 SUPREME COURT OF THE UNITED STATES

No. 425, October Term, 1950

ORDER ALLOWING CERTIORARI—Filed February 26, 1951.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 934439 642